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Contents

Federal Register

Vol. 88, No. 43

Monday, March 6, 2023

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 88, No. 43
Monday, March 6, 2023

Presidential Documents

Title 3—

The President

Proclamation 10528 of March 1, 2023

Read Across America Day, 2023

By the President of the United States of America

A Proclamation

On Read Across America Day, our Nation recognizes the value of literacy to our democracy. We celebrate the books that inspire our children to dream big, expand the limits of their understanding, and explore diverse perspectives and cultures through the eyes of others. We also honor educators, parents, librarians, authors, mentors, and everyone who fosters the power of reading to open doors of opportunity and build greater awareness about the complex world around us.

''The more that you read,'' Dr. Seuss wrote, ''the more things you will know. The more that you learn, the more places you'll go.'' In other words, knowledge is power. Books impart lessons that enrich our lives, stimulate our curiosity, promote contemplation and reflection, and affirm the myriad possibilities available to every person. Reading transports kids to unique places where they can embrace unfamiliar ideas, develop their own intellect, and spark creativity in their lives. Our children are the kite strings that lift our national ambitions, and inspiring them to read is essential to America's future.

Unfortunately, not all children have the same access to empowering books, dynamic instruction, or environments that foster curiosity. Learning disruptions during the COVID–19 pandemic led many American children to miss reading benchmarks—particularly in historically underserved communities.

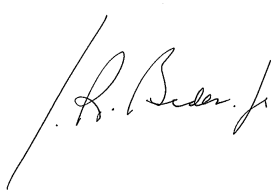
My Administration is committed to improving literacy across America and supporting the devoted educators on the frontlines of this work. That is why our American Rescue Plan invested a historic $122 billion to help schools reopen safely, promote academic recovery, increase teacher pay, enhance mental health services, and expand afterschool and summer programs. Since I took office, public schools have hired 457,000 educators and staff, including reading specialists, and we continue to take steps to strengthen the teacher pipeline across the country. Meanwhile, my goal is to make 2 years of high-quality preschool available to every child in America. Research shows that children who start school at 3 and 4 years old are far more likely to graduate from high school and continue their education. My Administration is also promoting adult literacy through our Adult Education State grants, which support programs that help adults become better readers, obtain a secondary school diploma, transition to postsecondary education and training, and gain the knowledge and skills necessary for employment and self-sufficiency.

In the words of the First Lady, a lifelong English teacher, ''loving to read means loving to learn.'' On Read Across America Day and every day, let us nurture our children with the resources and support they need to become proficient and passionate readers. Let us make books accessible, reading fun, and education meaningful. Let us continue striving to put the next generation of Americans on a path of lifelong learning and limitless possibilities.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2, 2023,

as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–04616
Filed 3–3–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Presidential Determination No. 2023–05 of March 1, 2023

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Airbreathing Engines, Advanced Avionics Position Navigation and Guidance Systems, and Constituent Materials for Hypersonic Systems

Memorandum for the Secretary of Defense

Ensuring a robust, resilient, and competitive domestic defense industrial base that has the capability, capacity, and workforce to meet the hypersonic warfighting mission is essential to our national security. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

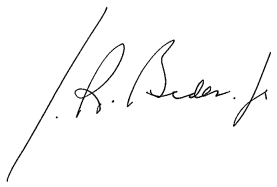
(1) airbreathing engines, advanced avionics position navigation and guidance systems, and constituent materials for hypersonic systems are essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the additional investment required to provide airbreathing engines and constituent materials for hypersonic systems adequately and in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost-effective, expedient, and practical alternative method for meeting the need for this critical industrial production capability.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for these supply chains is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for airbreathing engines, advanced avionics position navigation and guidance systems, and constituent materials for hypersonic systems.

You are authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 1, 2023

[FR Doc. 2023–04617
Filed 3–3–23; 8:45 am]
Billing code 5001–06–P

Rules and Regulations

Federal Register
Vol. 88, No. 43
Monday, March 6, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0424; Project Identifier AD–2022–01575–A; Amendment 39–22368; AD 2023–04–20]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Cirrus Design Corporation (Cirrus) Model SF50 airplanes. This AD was prompted by reports of an accident and an incident due to uncommanded activation of the Cirrus Airframe Parachute System (CAPS) autopilot mode while in flight. This AD requires booting the avionics in configuration mode, inhibiting the CAPS autopilot, fabricating and installing information placards, revising the existing airplane flight manual (AFM) for your airplane, and revising the airworthiness limitations section (ALS) of the existing airplane maintenance manual (AMM) or Instructions for Continued Airworthiness (ICA) and your existing approved maintenance or inspection program, as applicable. For certain airplanes, this AD also requires modifying the wiring to remove the CAPS power timer functionality. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 21, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 21, 2023.

The FAA must receive comments on this AD by April 20, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2023–0424; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; phone: (833) 735–0651; email: *info@cirrusaircraft.com;* website: *cirrusaircraft.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0424.

FOR FURTHER INFORMATION CONTACT: Joe Dubusky, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7543; email: *joseph.dubusky@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0424 and Project Identifier AD–2022–01575–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joe Dubusky, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report that a Cirrus Model SF50 airplane was involved in an accident in which multiple flight control issues occurred after takeoff, causing the pilot to manually deploy the CAPS parachute. The FAA has no data showing the pilot received any crew alert system (CAS) messages indicating a CAPS autopilot malfunction. It was determined that the uncommanded activation of the CAPS autopilot mode contributed to the accident. It was also determined that corrosion in the CAPS power timer circuit (part of the CAPS autopilot control mode circuit) may have

provided an erroneous signal to the CAPS control box, inadvertently activating the CAPS autopilot mode. The FAA received several additional reports of corrosion on the CAPS power timer circuits on Cirrus Model SF50 airplanes.

The FAA also received a report of an autopilot auto-throttle malfunction on a Cirrus Model SF50 airplane that caused the airplane to pitch up during climb shortly after takeoff and required manual intervention by the pilot. This event, and the previously mentioned accident, occurred shortly after takeoff and at an altitude of less than 1,000 feet above ground level. The inadvertent activation of the CAPS autopilot mode introduces an uncommanded 30-degree pitch upward at a g-force of approximately 1.9g, which could cause the airplane to stall in a critical phase of flight if the autopilot is not disconnected.

This condition, if not addressed, could result in reduced ability of the flight crew to maintain safe flight and landing of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Cirrus SF5X Service Bulletin SB5X–90–14R1, dated January 20, 2023. This service information specifies procedures for booting the avionics in configuration mode, inhibiting the CAPS autopilot, fabricating and installing information placards, and revising the AFM. For certain airplanes, the service information also provides procedures for modifying the wiring to remove the CAPS power timer functionality.

The FAA also reviewed the following temporary changes. These temporary changes provide revised CAPS procedures including interior placards, emergency procedures, emergency CAS procedures, and abnormal CAS procedures for affected AFMs part number (P/N) 31452–001 Revision A1 and P/N 31452–002 Revision 3.

- Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–03, dated December 8, 2022, for AFM 31452–001 Revision A1.
- Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–04, dated December 8, 2022, for AFM 31452–002 Revision 3.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described. This AD also requires revising the existing AFM for your airplane and revising the ALS of the existing AMM or ICA and your existing approved maintenance or inspection program, as applicable.

The owner/operator (pilot) holding at least a private pilot certificate may revise the existing AFM for your airplane and may revise the ALS of the existing AMM or ICA and your existing approved maintenance or inspection program, as applicable, and must enter compliance with the applicable paragraphs of this AD into the aircraft records in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The pilot may perform these actions because they only involve revising the existing AFM and the ALS of the existing AMM or the ICA and the existing approved maintenance or inspection program, as applicable. These actions could be performed equally well by a pilot or mechanic. This is an exception to the FAA's standard maintenance regulations.

Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once the modification is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because of the possibility of uncommanded activation of the CAPS autopilot mode occurring while in flight without advanced warning. The inadvertent activation of the CAPS autopilot mode introduces an uncommanded 30-degree pitch upward at a g-force of approximately 1.9g, which could cause the airplane to stall in a critical phase of flight if the autopilot is not disconnected. If not addressed, the unsafe condition could result in reduced ability of the flight crew to maintain safe flight and landing of the airplane. The actions of inhibiting the CAPS autopilot mode and installing CAPS information placards must be accomplished within 25 hours time-in-service, which is approximately 2.5 months based on the average flight-hour utilization rates of these airplanes. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 365 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Boot avionics in configuration mode, set CAPS activated autopilot to inhibited state, and incorporate Temporary Revisions into AFM.	1 work-hour × $85 per hour = $85.	Not applicable	$85 initially and at each new software update/load.	$31,025 initially.
Fabricate and install information placards.	1 work-hour × $85 per hour = $85.	Not Applicable	$85	$31,025.
Modify the wiring to remove CAPS power timer functionality on serial numbered airplanes 0005—0272.	1.5 work-hours × $85 per hour = $127.50.	Not Applicable	$127.50	The FAA has no data to determine the number of airplanes that might need this modification.
Modify the wiring to remove CAPS power timer functionality on serial numbered airplanes 0273—0409.	.5 work-hour × $85 per hour = $42.50.	Not Applicable	$42.50	The FAA has no data to determine the number of airplanes that might need this modification.
Revise the ALS of the existing AMM or ICA.	1 work-hour × $85 per hour = $85.	Not Applicable	$85	$31,025.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–04–20 Cirrus Design Corporation: Amendment 39–22368; Docket No. FAA–2023–0424; Project Identifier AD–2022–01575–A.

(a) Effective Date

This airworthiness directive (AD) is effective March 21, 2023.

(b) Affected ADs

None.

(c) Applicability

Cirrus Design Corporation (Cirrus) Model SF50 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2200, Auto Flight System.

(e) Unsafe Condition

This AD was prompted by reports of an accident and an incident due to uncommanded activation of the Cirrus Airframe Parachute System (CAPS) autopilot mode while in flight. The FAA is issuing this AD to address this unsafe condition. The unsafe condition, if not addressed, could result in the reduced ability of the flight crew to maintain safe flight and landing of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For serial numbers 0005 through 0409 inclusive, within 25 hours time-in-service (TIS) after the effective date of this AD: Do the actions in paragraphs (g)(1)(i) through (iii) of this AD, in accordance with steps A., B., and C., of the Accomplishment Instructions of Cirrus SF5X Service Bulletin SB5X–90–14R1, dated January 20, 2023 (Cirrus SB5X–90–14R1), as applicable to the serial number of your airplane.

(i) Boot avionics in configuration mode.

(ii) Set CAPS activated autopilot to inhibited state.

(iii) Fabricate and install information placards.

(2) For serial numbers 0005 through 0409 inclusive, within 25 hours TIS after the effective date of this AD: Revise the Emergency Procedures section of the existing airplane flight manual (AFM) for your airplane by inserting Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–03, dated December 8, 2022, for AFM 31452–001 Revision A1; or Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–04, dated December 8, 2022, for AFM 31452–002 Revision 3, as applicable to your airplane.

(3) For all serial numbers, within 25 hours TIS after the effective date of this AD: Revise the airworthiness limitations section (ALS) of the existing airplane maintenance manual (AMM) or Instructions for Continued Airworthiness and your existing approved maintenance or inspection program, as applicable to your airplane, by incorporating the language in figure 1 to paragraph (g)(3) of this AD. This action can be done by placing a copy of this AD in the ALS of the existing AMM for your airplane.

Figure 1 to Paragraph (g)(3)—Inhibit CAPS Autopilot Mode

Inhibit CAPS Autopilot Mode

Anytime software is loaded/updated, verify CAPS Autopilot Mode is inhibited. Reference Cirrus Service Bulletin SB5X-90-14R1.

(4) For serial numbers 0005 through 0409 inclusive, the actions required by paragraph (g)(2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with the applicable paragraphs of this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(5) For all serial numbers, the actions required by paragraph (g)(3) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with the applicable paragraphs of this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(6) For serial numbers 0005 through 0409 inclusive on which Field Modification FRA00019905 has not been done, within 25 hours TIS after the effective date of this AD: Modify the wiring to remove the CAPS power timer functionality in accordance with step D. of the Accomplishment Instructions of Cirrus SB5X–90–14R1.

(h) Credit for Previous Actions

You may take credit for the actions required by paragraph (g)(1) of this AD if you performed those actions before the effective date of this AD using Cirrus SF5X Service Bulletin SB5X–90–14, dated December 8, 2022.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Joe Dubusky, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7543; email: *joseph.dubusky@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Cirrus SF5X Service Bulletin SB5X–90–14R1, dated January 20, 2023.

(ii) Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–03, dated December 8, 2022, for AFM 31452–001 Revision A1.

(iii) Cirrus Vision SF50 Airplane Flight Manual (AFM) Temporary Change TAFM 22–04, dated December 8, 2022, for AFM 31452–002 Revision 3.

(3) For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; phone: (833) 735–0651; email: *info@cirrusaircraft.com;* website: *cirrusaircraft.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 2, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04631 Filed 3–2–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1575; Project Identifier MCAI–2022–00859–T; Amendment 39–22351; AD 2023–04–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–15–20, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–15–20 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2020–15–20 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 2, 2020 (85 FR 53156, August 28, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1575; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1575.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020) (AD 2020–15–20). AD 2020–15–20 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2020–15–20 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–15–20 to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

The NPRM published in the **Federal Register** on December 9, 2022 (87 FR 75525). The NPRM was prompted by AD 2022–0126, dated June 28, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0126) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1575.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–15–20 and to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0126. The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from The Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0126. This service information specifies new or more restrictive airworthiness limitations for certification maintenance requirements.

This AD also requires EASA AD 2019–0288, dated November 28, 2019, which the Director of the Federal Register approved for incorporation by reference as of October 2, 2020 (85 FR 53156, August 28, 2020).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–15–20 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020); and
■ b. Adding the following new AD:

2023–04–04 Airbus SAS: Amendment 39–22351; Docket No. FAA–2022–1575; Project Identifier MCAI–2022–00859–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 10, 2023.

(b) Affected ADs

This AD replaces AD 2020–15–20, Amendment 39–21183 (85 FR 53156, August 28, 2020) (AD 2020–15–20).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–15–20, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before August 20, 2019, except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019 (EASA AD 2019–0288). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2019–0288 With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–15–20, With no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0288 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2019–0288 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''maintenance tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0288 within 90 days after October 2, 2020 (the effective date of AD 2020–15–20).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0288 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0288, or within 90 days after October 2, 2020 (the effective date of AD 2020–15–20).

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0288 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0288 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–15–20, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0288.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0126, dated June 28, 2022 (EASA AD 2022–0126). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0126

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0126 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0126 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable within 90 days after the effective date of this AD

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0126 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0126, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0126 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0126 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0126.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on April 10, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0126, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on October 2, 2020 (85 FR 53156, August 28, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2019–0288, dated November 28, 2019.

(ii) [Reserved]

(5) For EASA ADs 2022–0126 and 2019–0288, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 15, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04465 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1573; Project Identifier MCAI–2022–00671–T; Amendment 39–22353; AD 2023–04–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–22–16, AD 2021–16–01, and AD 2022–04–03, which applied to certain Airbus SAS Model A318, A320, and A321 series airplanes; and Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes. AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 30, 2022 (87 FR 10064, February 23, 2022).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 28, 2021 (86 FR 47212, August 24, 2021).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 10, 2020 (85 FR 70439, November 5, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1573; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1573.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–22–16, Amendment 39–21312 (85 FR 70439, November 5, 2020) (AD 2020–22–16), AD 2021–16–01, Amendment 39–21662 (86 FR 47212, August 24, 2021) (AD 2021–16–01), and AD 2022–04–03, Amendment 39–21944 (87 FR 10064, February 23, 2022) (AD 2022–04–03). AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03 applied to certain Airbus SAS Model A318, A320, and A321 series airplanes; and Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes. AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2021–16–01 specified that accomplishing the revision required by that AD terminates the corresponding requirements of AD 2020–22–16, for the tasks identified in the service information referred to in EASA AD 2020–0219, dated October 12, 2020, only. AD 2022–04–03 specified that accomplishing the revision required by that AD terminates the limitations of Task 262300–00001–1–C, as required by paragraph (i) of AD 2020–22–16, for airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020 only. The FAA issued AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03 to address safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

The NPRM published in the **Federal Register** on December 6, 2022 (87 FR 74530). The NPRM was prompted by AD 2022–0091, dated May 20, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0091) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been

developed to address the unsafe condition on these products.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0091. The FAA is issuing this AD to address a safety significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1573.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0091, which specifies new or more restrictive airworthiness limitations for certification maintenance requirements.

This AD requires EASA AD 2020–0067, dated March 23, 2020; which the Director of the Federal Register approved for incorporation by reference as of December 10, 2020 (85 FR 70439, November 5, 2020).

This AD requires EASA AD 2020–0219, dated October 12, 2020, which the Director of the Federal Register approved for incorporation by reference as of September 28, 2021 (86 FR 47212, August 24, 2021).

This AD also requires EASA AD 2021–0108, dated April 20, 2021, which the Director of the Federal Register approved for incorporation by reference as of March 30, 2022 (87 FR 10064, February 23, 2022).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 1,680 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–22–16, AD 2021–16–01, and AD 2022–04–03 to be $7,650 (90 work-hours × $85 per work-hour) per AD.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–22–16, Amendment 39–21312 (85 FR 70439, November 5, 2020); AD 2021–16–01, Amendment 39–21662 (86 FR 47212, August 24, 2021); AD 2022–04–03, Amendment 39–21944 (87 FR 10064, February 23, 2022); and

■ b. Adding the following new airworthiness directive:

2023–04–06 Airbus SAS: Amendment 39–22353; Docket No. FAA–2022–1573; Project Identifier MCAI–2022–00671–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 10, 2023.

(b) Affected ADs

This AD replaces the ADs specified in paragraphs (b)(1) through (3) of this AD.

(1) AD 2020–22–16, Amendment 39–21312 (85 FR 70439, November 5, 2020) (AD 2020–22–16).

(2) AD 2021–16–01, Amendment 39–21662 (86 FR 47212, August 24, 2021) (AD 2021–16–01).

(3) AD 2022–04–03, Amendment 39–21944 (87 FR 10064, February 23, 2022) (AD 2022–04–03).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any

category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 18, 2022.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address to address a safety significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Existing Maintenance or Inspection Program From AD 2020–22–16, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–22–16, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020, except for Model A319–171N airplanes: Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0067, dated March 23, 2020 (EASA AD 2020–0067). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0067 With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–22–16, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0067 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0067 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0067 within 90 days after December 10, 2020 (the effective date of AD 2020–22–16).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0067 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0067, or within 90 days after December 10, 2020 (the effective date of AD 2020–22–16), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0067 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0067 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals From AD 2020–22–16, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–22–16, with a new exception. Except as required by paragraph (o) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0067.

(j) Retained Revision of the Existing Maintenance or Inspection Program From AD 2021–16–01 With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–16–01, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 10, 2020, except for Model A319–171N airplanes: Revise the existing maintenance or inspection program, as applicable, by incorporating task(s) and associated thresholds and intervals specified in paragraph (3) of EASA AD 2020–0219, dated October 12, 2020 (EASA AD 2020–0219), except you are required to incorporate task(s) and associated thresholds and intervals within 90 days after September 28, 2021 (the effective date of AD 2021–16–01). Record a compliance time for the initial tasks of either the applicable ''thresholds'' incorporated by the requirements of paragraph (3) of EASA AD 2020–0219 or 90 days after September 28, 2021 (the effective date of AD 2021–16–01), whichever would occur later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(k) Retained Restrictions on Alternative Actions and Intervals From AD 2021–16–01, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2021–16–01, with a new exception. Except as required by paragraph (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0219.

(l) Retained Revision of the Existing Maintenance or Inspection Program From AD 2022–04–03, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–04–03, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before December 9, 2020, except for Model A319–171N airplanes: Except as specified in paragraph (m) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0108, dated April 20, 2021 (EASA AD 2021–0108). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(m) Retained Exceptions to EASA AD 2021–0108, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2022–04–03, with no changes.

(1) Where EASA AD 2021–0108 refers to its effective date, this AD requires using March 30, 2022 (the effective date of AD 2022–04–03).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0108 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0108 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after March 30, 2022 (the effective date of AD 2022–04–03).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0108 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0108, or within 90 days after March 30, 2022 (the effective date of AD 2022–04–03), whichever occurs later.

(5) The provisions specified in paragraphs (4) of EASA AD 2021–0108 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0108 does not apply to this AD.

(n) Retained Restrictions on Alternative Actions and Intervals From AD 2022–04–03, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2022–04–03, with a new exception. Except as required by paragraph (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (l) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0108.

(o) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (p) of this AD: Comply with all required actions and compliance times specified in, and in accordance with EASA AD 2022–0091, dated May 20, 2022 (EASA AD 2022–0091). Accomplishing the revision of the existing

maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g), (j), and (l) of this AD.

(p) Exceptions to EASA AD 2022–0091

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0091 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0091 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0091 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0091, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0091 do not apply to this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0091.

(q) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (o) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0091.

(r) Terminating Action for Certain Requirements of AD 2020–22–16

(1) Accomplishing the actions required by paragraph (j) of this AD terminates the corresponding requirements of AD 2020–22–16, for the tasks identified in the service information referred to in EASA AD 2020–0219 only.

(2) Accomplishing the actions required by paragraph (l) of this AD terminates the limitations of Task 262300–00001–1–C, as required by paragraph (i) of AD 2020–22–16, for airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020 only.

(s) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (t) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(t) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov*.

(u) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on April 10, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0091, dated May 20, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on December 10, 2020 (85 FR 70439, November 5, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0067, dated March 23, 2020.

(ii) [Reserved]

(5) The following service information was approved for IBR on September 28, 2021 (86 FR 47212, August 24, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0219, dated October 12, 2020.

(ii) [Reserved]

(6) The following service information was approved for IBR on March 30, 2022 (87 FR 10064, February 23, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0108, dated April 20, 2021.

(ii) [Reserved]

(7) For EASA ADs 2022–0091, 2020–0067, 2020–0219, and 2021–0108, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(8) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(9) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 16, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04467 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1578; Project Identifier MCAI–2022–00858–T; Amendment 39–22352; AD 2023–04–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–09–11, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–11 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2022–09–11 and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 21, 2022 (87 FR 29819, May 17, 2022).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1578; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and

other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1578.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–09–11, Amendment 39–22031 (87 FR 29819, May 17, 2022) (AD 2022–09–11). AD 2022–09–11 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–09–11 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–09–11 to address reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on December 13, 2022 (87 FR 76162). The NPRM was prompted by AD 2022–0125, dated June 28, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0125) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1578.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–09–11 and to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0125. The FAA is issuing this AD to address reduced structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from The Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0125 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2021–0207, dated September 15, 2021, which the Director of the Federal Register approved for incorporation by reference as of June 21, 2022 (87 FR 29819, May 17, 2022).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–09–11 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2022–09–11, Amendment 39–22031 (87 FR 29819, May 17, 2022); and
■ b. Adding the following new AD:

2023–04–05 Airbus SAS: Amendment 39–22352; Docket No. FAA–2022–1578; Project Identifier MCAI–2022–00858–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 10, 2023.

(b) Affected ADs

This AD replaces AD 2022–09–11, Amendment 39–22031 (87 FR 29819, May 17, 2022) (AD 2022–09–11).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2022–09–11, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0207, dated September 15, 2021 (EASA AD 2021–0207). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0207, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2022–09–11, with no changes.

(1) Where EASA AD 2021–0207 refers to its effective date, this AD requires using June 21, 2022 (the effective date of AD 2022–09–11).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0207 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0207 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after June 21, 2022 (the effective date of AD 2022–09–11).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0207 is at the ''applicable thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0207, or within 90 days after June 21, 2022 (the effective date of AD 2022–09–11), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0207 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0207 does not apply to this AD.

(i) Retained Provisions for Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2022–09–11, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0207.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0125, dated June 28, 2022 (EASA AD 2022–0125). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0125

(1) Where EASA AD 2022–0125 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0125 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2022–0125 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0125 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0125, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0125 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2022–0125 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0125.

(m) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on April 10, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0125, dated June 28, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 21, 2022 (87 FR 29819, May 17, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0207, dated September 15, 2021.

(ii) [Reserved]

(5) For EASA AD 2022–0125 and AD 2021–0207, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 15, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04464 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1580; Project Identifier MCAI–2022–00808–T; Amendment 39–22354; AD 2023–04–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a determination that the surface protection is missing between certain aluminum brackets and the struts to which they are attached in the flight deck air distribution system. This AD requires applying surface protection to the affected aluminum brackets and struts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits modifying an airplane using certain service information. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 10, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1580; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1580.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on December 13, 2022 (87 FR 76160). The NPRM was prompted by AD 2022–0119, dated June 21, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0119) (also referred to as the MCAI). The MCAI states that the surface protection was determined to be missing between certain aluminum brackets and the struts to which they are attached in the flight deck air distribution system. The affected parts were installed either in production through Airbus modification 109229 or 109230, or in-service through accomplishing the original issue of Airbus Service Bulletin A350–21–P031; or the original issue of Airbus Service Bulletin A350–21–P032. This condition, if not corrected, could lead to rupture of the associated ducting, reducing the efficiency of the flight deck air distribution system, which, in combination with smoke in the flight deck, could result in impaired flightcrew capability to control the airplane.

In the NPRM, the FAA proposed to require applying surface protection to the affected aluminum brackets and struts, as specified in EASA AD 2022–0119. The NPRM also proposed to prohibit modifying an airplane using certain service information. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1580.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from The Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0119 specifies procedures for applying surface protection to aluminum brackets and struts at frame (FR) 22 and FR 24, as applicable, in zone C2–2 forward section. EASA AD 2020–0119 also prohibits modifying an airplane using certain service information. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The

FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$1,350	$2,030	$60,900

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–04–07 Airbus SAS: Amendment 39–22354; Docket No. FAA–2022–1580; Project Identifier MCAI–2022–00808–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 10, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0119, dated June 21, 2022 (EASA AD 2022–0119).

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by a determination that the surface protection is missing between certain aluminum brackets and the struts to which they are attached in the flight deck air distribution system. The FAA is issuing this AD to address missing aluminum bracket surface protection. This condition, if not corrected, could lead to rupture of the associated ducting, reducing the efficiency of the flight deck air distribution system, which, in combination with smoke in the flight deck, could result in impaired flightcrew capability to control the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0119.

(h) Exceptions to EASA AD 2022–0119

(1) Where EASA AD 2022–0119 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0119.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0119, dated June 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0119, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 16, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04466 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230301–0058]

RIN 0694–AJ06

Additions and Revisions of Entities to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is amending the Export Administration Regulations (EAR) by adding 37 entities under 38 entries to the Entity List. These entities are listed under the destinations of Belarus (1), Burma (3), the People's Republic of China (China) (28), Pakistan (4), Russia (1), and Taiwan (1). Some entities are added under multiple entries, accounting for the difference in the totals. This final rule also modifies 10 existing entries on the Entity List under the destination of China.

DATES: This rule is effective March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) where a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

In this final rule, the ERC determined to add AIF Global Logistics Co., Ltd., Aispeed Industry Ltd., Arttronix International (HK) Ltd., Galaxy Electronics, Jotrin Electronics Ltd., Korchina Logistics (HK) Ltd., Suzhou Centec Communications Co., Ltd. and Suzhou Centec Technology Co., Ltd to the Entity List, all under the destination of China, for engaging in activities contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR. Specifically, AIF Global Logistics Co., Ltd., Aispeed Industry Ltd., Arttronix International (HK) Ltd., Galaxy Electronics, Jotrin Electronics Ltd., and Korchina Logistics (HK) Ltd., are being added as these companies have supplied and/or attempted to supply items subject to the EAR to Iran's Paradazan System Namad Arman (PASNA), an entity listed by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) as a Specially Designated National (SDN). Suzhou Centec Communications Co., Ltd. and Suzhou Centec Technology Co., Ltd., are added for their support of China's military modernization. These actions include acquiring or attempting to acquire U.S.-origin items in support of programs for the People's Liberation Army and providing goods and services to customers on the BIS Entity List, leading to the possibility for diversion. Suzhou Centec Technology Co., Ltd. also participates in and hosts military and military-civil fusion exhibitions and summits, and specifically advertises military end uses for its products. These eight entities are added with a license requirement for all items subject to the EAR. License applications will be reviewed under a presumption of denial.

The ERC determined to add Baoding Giant Import and Export Co., Ltd., Baoding Shimaotong Enterprises Services Co., Ltd., Gaobeidian Kaituo Precise Instrument Co., Ltd., and Luo Dingwen, under the destination of China, to the Entity List. These additions are made due to their contributions to ballistic missile programs of concern. The ERC determined to add Rayscience Optoelectronics Innovation Company Ltd., under the destination of China, based on its contributions to Pakistan's ballistic missile program. These five entities are added with a license requirement for all items subject to the EAR. License applications will be reviewed pursuant to § 744.3(d) of the EAR.

The ERC determined to add Beijing Zhengyuan Chuangshi Consulting Co., Ltd., Hongtai Electric Ltd., Nanjing Colpak Mechanical Equipment Co., Ltd., Liang Ping Huang and Sunton Tech Hong Kong Ltd. to the Entity List, all under the destination of China; Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd., under the destinations of China and Pakistan; and Abdul Razaq Asim, Add-On Technology, and Dynamic Engineers under the destination of Pakistan, to the Entity List. These additions are based on the entities' involvement in unsafeguarded nuclear activities and missile-related activities. These eight entities require a license for all items subject to the EAR. License applications will be reviewed pursuant to §§ 744.2(d) and 744.3(d) of the EAR.

The ERC determined to add BGI Research; BGI Tech Solutions

(Hongkong) Co., Ltd.; and Forensic Genomics International, to the Entity List, under the destination of China, pursuant to § 744.11 of the EAR. The addition of these entities is based upon information that indicates their collection and analysis of genetic data poses a significant risk of contributing to monitoring and surveillance by the government of China, which has been utilized in the repression of ethnic minorities in China. Information also indicates that the actions of these entities concerning the collection and analysis of genetic data present a significant risk of diversion to China's military programs. These entities are added with a license requirement for all items subject to the EAR. License applications for these entities will be subject to a case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.

The ERC determined to add FISCA Security & Communication Co., Ltd., Ministry of Transport and Communications, and Naung Yoe Technologies Co., Ltd. to the Entity List, under the destination of Burma. These additions are for activities contrary to U.S. foreign policy interests under § 744.11 of the EAR. These entities are added for providing surveillance equipment and services to Burma's military regime, enabling it to carry out human rights abuses through the tracking and identification of target individuals and groups. The military regime has unjustly arrested leaders of the democratically elected government and committed serious human rights abuses and other abuses against individuals in Burma, including violently suppressing peaceful protests. These entities have enabled these abuses by providing support to Burma's military regime. These entities are added to the Entity List with a license requirement for all items subject to the EAR. License applications for these entities will be reviewed on a case-by-case basis for telecommunications infrastructure items described in Category 5 Part 1 or Category 5 Part 2 and consumer communications devices identified in Part § 740.19; as well as a presumption of denial for all other items subject to the EAR.

The ERC determined to add DMT Trading LLC, under the destination of Belarus, DMT Electronics, under the destination of Russia, and Neotec Semiconductor Ltd., under the destination of Taiwan, to the Entity List. These additions are based on information indicating that these companies significantly contribute to Russia's military and/or defense industrial base, contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. These entities will receive a footnote 3 designation. A footnote 3 designation indicates that they are Russian or Belarusian 'military end users' in accordance with § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product' (FDP) rule, detailed in § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. License applications will be reviewed under policy of denial for all items subject to the EAR other than food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

The ERC determined to add 4Paradigm Technology Co.; Inspur Group Co., Ltd.; Loongson Technology; National Research Center for Parallel Computer Engineering and Technology; Qingdao National Laboratory of Marine Science and Technology; Wuxi Institute of Advanced Technology; to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of the China's military modernization efforts. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. All of these entities will require a license for items subject to the EAR, which will be reviewed under a presumption of denial. They are also given a footnote 4 designation, which means that ''items subject to the EAR'' for the purpose of these license requirements include foreign-produced items that are subject to the EAR pursuant to § 734.9(e)(2) of the EAR.

For the reasons described above, this final rule adds the following 37 entities under 38 entries to the Entity List and includes, where appropriate, aliases:

Belarus

- DMT Trading LLC.

Burma

- FISCA Security & Communication Co., Ltd.,
- Ministry of Transport and Communications, *and*
- Naung Yoe Technologies Co., Ltd.

China

- 4Paradigm Technology Co., Ltd.,
- AIF Global Logistics Co., Ltd.,
- Aispeed Industry Ltd.,
- Arttronix International (HK) Ltd.,
- Baoding Giant Import and Export Co., Ltd.,
- Baoding Shimaotong Enterprises Services Co., Ltd.,
- Beijing Zhengyuan Chuangshi Consulting Co., Ltd.,
- BGI Research,
- BGI Tech Solutions (Hongkong) Co., Ltd.,
- Forensic Genomics International,
- Galaxy Electronics,
- Gaobeidian Kaituo Precise Instrument Co., Ltd.,
- Hongtai Electric Ltd.,
- Inspur Group Co., Ltd.,
- Jotrin Electronics Ltd.,
- Korchina Logistics (HK) Ltd.,
- Liang Ping Huang,
- Loongson Technology,
- Luo Dingwen,
- Nanjing colpak Mechanical Equipment Co., Ltd.,
- Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd.,
- National Research Center for Parallel Computer Engineering and Technology,
- Qingdao National Laboratory of Marine Science and Technology,
- Rayscience Optoelectronics Innovation Co., Ltd.,
- Sunton Tech Hong Kong Ltd.,
- Suzhou Centec Communications Co., Ltd.,
- Suzhou Centec Technology Co., Ltd., *and*
- Wuxi Institute of Advanced Technology.

Pakistan

- Abdul Razaq Asim,
- Add-On Technology,
- Dynamic Engineers, *and*
- Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd.

Russia

- DMT Electronics.

Taiwan

- Neotec Semiconductor Ltd.

Modifications to the Entity List

This final rule implements the decision of the ERC to modify the entries of ten existing entities on the Entity List, all under the destination of China. Nine aliases and nine addresses are added to Beijing Institute of Technology. The license review policy of Beijing University of Aeronautics and Astronautics (BUAA) is modified from the policy set forth in § 744.3(d) to a presumption of denial; this modification is based on their contributions to China's military modernization efforts; ten aliases and eight addresses are added to the entry as well. Two aliases and two addresses are added to the

entry for Beijing University of Posts and Telecommunications (BUPT). Two aliases are added to the entry for Harbin Engineering University. Nine aliases and nine addresses are added to the entry for Harbin Institute of Technology. Five aliases and six addresses are added to the entry for Nanjing University of Aeronautics and Astronautics. Five aliases and five addresses are added to the entry for Nanjing University of Science and Technology. Seven aliases and nine addresses are added to the entry for Northwestern Polytechnical University. Five aliases and four addresses are added to the entry for Sichuan University. Thirteen aliases and thirteen addresses are added to the entry for Tianjin University.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on March 2, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended by:

■ a. Under BELARUS, adding an entry in alphabetical order for ''DMT Trading LLC;''

■ b. Under BURMA, adding entries in alphabetical order for ''FISCA Security & Communication Co., Ltd.;'' ''Ministry of Transport and Communications;'' and ''Naung Yoe Technologies Co., Ltd.''

■ c. Under CHINA, PEOPLE'S REPUBLIC OF:

■ i. Adding entries in alphabetical order for ''4Paradigm Technology Co., Ltd.;'' ''AIF Global Logistics Co., Ltd.;'' ''Aispeed Industry Ltd.;'' ''Arttronix International (HK) Ltd.;'' ''Baoding Giant Import and Export Co., Ltd.;'' ''Baoding Shimaotong Enterprises Services Co., Ltd.;''

■ ii. Revising the entries for ''Beijing Institute of Technology;'' ''Beijing University of Aeronautics and Astronautics (BUAA)'' ''Beijing University of Posts and Telecommunications (BUPT);''

■ iii. Adding entries in alphabetical order for ''Beijing Zhengyuan Chuangshi Consulting Co., Ltd.;'' ''BGI Research;'' ''BGI Tech Solutions (Hongkong) Co., Ltd.;'' ''Forensic Genomics International;'' ''Galaxy Electronics;'' ''Gaobeidian Kaituo Precise Instrument Co., Ltd.;''

■ iv. Revising the entries for ''Harbin Engineering University'' and ''Harbin Institute of Technology;''

■ v. Adding entries in alphabetical order for ''Hongtai Electric Ltd.;'' ''Inspur Group Co., Ltd.;'' ''Jotrin Electronics Ltd.;'' ''Korchina Logistics (HK) Ltd.;'' ''Liang Ping Huang;'' ''Loongson Technology;'' ''Luo Dingwen;'' ''Nanjing colpak Mechanical Equipment Co., Ltd.;'' ''Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd.;''

■ vi. Revising the entries for ''Nanjing University of Aeronautics and Astronautics;'' ''Nanjing University of Science and Technology;''

■ vii. Adding an entry in alphabetical order for ''National Research Center for Parallel Computer Engineering and Technology;''

■ viii. Revising the entry for ''Northwestern Polytechnical University;''

■ ix. Adding entries in alphabetical order for ''Qingdao National Laboratory of Marine Science and Technology;'' ''Rayscience Optoelectronics Innovation Co., Ltd.;''

■ x. Revising the entry for ''Sichuan University;''

■ xi. Adding entries in alphabetical order for ''Sunton Tech Hong Kong Ltd.;'' ''Suzhou Centec Communications Co., Ltd.;'' ''Suzhou Centec Technology Co., Ltd.;''

■ xii. Revising the entry for ''Tianjin University;''

■ xiii. Adding an entry in alphabetical order for ''Wuxi Institute of Advanced Technology;''

■ d. Under PAKISTAN, adding entries in alphabetical order for ''Abdul Razaq

Asim;'' ''Add-On Technology;'' ''Dynamic Engineers;'' *and* ''Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd.;''

■ e. Under RUSSIA, adding an entry in alphabetical order for ''DMT Electronics;'' and

■ f. Under TAIWAN, adding an entry in alphabetical order for ''Neotec Semiconductor Ltd.''

The revisions and additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
BELARUS	* *	*	* *	*
	DMT Trading LLC, 89/2 Pobediteley Ave., 220020 Minsk, Belarus.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
*	* * *	*	* *	*
BURMA	FISCA Security & Communication Co., Ltd., No-1/B, FISCA Building, 9 Miles, Pyay Road, Mayangone Township, Yangon City, Burma.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for telecommunications infrastructure items described in Category 5 Part 1 or Category 5 Part 2 and consumer communications devices identified in § 740.19; Presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/2023.
	* *	*	* *	*
	Ministry of Transport and Communications, Office No. 2, Kyidaunggan, Naypidaw, Burma.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for telecommunications infrastructure items described in Category 5 Part 1 or Category 5 Part 2 and consumer communications devices identified in § 740.19; Presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Naung Yoe Technologies Co., Ltd., No. 92, Thiri Yadanar Shopping Complex Nay Pyi Taw,Zabuthiri Tsp, Nay Pyi Taw, Burma; *and* No. 16, Aung Min Khaung (2) Street, Kamaryut Township, Yangon, Burma; *and* Block-4, Unit-4, Corner of Mingalar 2 Street & Blue Diamond Street, Mingalar Mandalay, 73rd Street Between Thazin & Ngu Wah Street, MyoThit1, Chan Mya Tharsi Township, Mandalay, Burma; *and* No. 315, Aung San Street, Myine Thar Yar Quater, Mawlamyine, Burma; *and* No. 131, Saw San Tun Street, Myoma Quatar, Taunggyi, Burma.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for telecommunications infrastructure items described in Category 5 Part 1 or Category 5 Part 2 and consumer communications devices identified in § 740.19; Presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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CHINA, PEOPLE'S REPUBLIC OF.	4Paradigm Technology Co., Ltd., a.k.a., the following three aliases: —4Paradigm; —4th Paradigm; *and* —Fourth Paradigm. Building 1, No. 66 Qinghe Middle Street, Haidian District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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Country	Entity	License requirement	License review policy	Federal Register citation
	AIF Global Logistics Co., Ltd., 21FL, Room 2110 Number 122 Tiyu East Guangzhou, China; *and* Room 2501–2508, 25th Floor Hualian Building Number 55 Dongdu Road, Ningbo, 315010, China; *and* Room 22F 322 Xianxia Road Singular Mansion Shanghai, 200336, China; *and* Unit A, 13/F JCG Building 16 Mongkok Road Kowloon, Hong Kong; *and* Workshop C6 28/F TML Tower Number 3 Hoi Shing Road Tsuen Wan N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Aispeed Industry Ltd., Number 5 Langshan Er Road Hi-Tech Zone, Nanshan, Shenzhen, China; *and* 10B Jin Cheng GE Jin Tao Yuan Tower, Nanshan, Shenzhen, China; *and* Room A10 Building A Logan Center Building Haishow Road 23 Baoan, Shenzhen, China; *and* Room 508 5/F Hewlett Center 54 Hoi Tuen Kwun Tong Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Arttronix International (HK) Ltd., a.k.a., the following one alias: —Aderal Industrial (HK) Limited. Room 3A 25 Builidng A Zhihui Innovation Center Huashenghui 2nd Qianjin Road, Baoan District, Guangdong, China; *and* 3/F Building A Datang Industrial Area Guanian Street, Longhua District, Guangdong, Shenzhen, China; *and* Room 1318–10 13/F Hollywood Plaza 610 Nathan Road Mongkok, Hong Kong; *and* 15/B 15/F Cheuk Nang Plaza 250 Hennessy Road, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Baoding Giant Import and Export Co., Ltd., Room 905 Fubaoxiuyu Business Building A, No. 77 Fuxing Road, Baoding City, Hebei, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Baoding Shimaotong Enterprises Services Co., Ltd., 35 Baihua West Road, New Urban District, Baoding City, Hebei, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Beijing Institute of Technology, a.k.a., the following nine aliases: —Beijing Institute of Technology, Advanced Technology Institute; —Beijing Institute of Technology, Chongqing Innovation Center; —Beijing Institute of Technology, Chongqing Microelectronics Research Institute; —Beijing Institute of Technology, Lunan Research Institute; —Beijing Institute of Technology, Shenzhen Automotive Research Institute; —Beijing Institute of Technology, Shenzhen Research Institute; —Beijing Institute of Technology, Southeast Research Institute; —Beijing Institute of Technology, Suzhou Research Institute; *and* —Beijing Institute of Technology, Tangshan Research Institute.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 83421 12/22/20. 87 FR 62202, 10/13/22. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	No. 5 South Zhongguancun Street, Haidian District, Beijing, China; *and* 19th floor, Building A, Innovation Plaza, No. 2007 Pingshan Avenue, Pingshan Street, Pingshan District, Shenzhen, China; *and* A207, Virtual University Park, South District, High-tech Zone, Yuehai Street, Nanshan District, Shenzhen, China; *and* No. 1938 Hanhuang Street, Hanjiang District, Putian City, China; *and* Unit 2, Building 1, Phase 3, R&D Building, Xiyong Micro-Electric Park, Shapingba District, Chongqing, China; *and* Building 9, No. 9 Shuguang Road, Longxing Town, Yubei District, Chongqing, China; *and* Building 5, Software Building, No. 3 Peiyuan Road, Science and Technology High-tech Zone, Suzhou, China; *and* No. 57 Jianshe Nan Road, Lubei District, Tangshan City, Hebei Province, China; *and* No. 888 Zhengtai Road, Shandong Province, Tengzhou City, China; *and* No. 3266 Furong Road, Lige Square, Changqing District, Jinan City, China.			
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	Beijing University of Aeronautics and Astronautics (BUAA), a.k.a., the following eleven aliases: —Beihang University; —Beihang University Dongying Research Institute; —Beihang University Hangzhou Innovation Institute; —Beihang University Hefei Innovation Institute; —Beihang University Jiangxi Research Institute; —Beihang University Ningbo Innovation Institute; —Beihang University Qingdao Research Institute; —Beihang University Shenzhen Research Institute; —Beihang University Suzhou Innovation Institute; —Beihang University Taizhou Research Institute; *and* —Beihang University Yunnan Innovation Institute. 37 Xueyuan Road, Haidian District, Beijing, China; *and* 393 Songling Road, Laoshan District, Shandong Province, Qingdao City, China; *and* 8 Shibo Road, Panlong District, Kunming City, China; *and* 18 Chuanghui Street, Changhe Avenue, Binjiang District, Hangzhou, China; *and* Group 7, Phase I, 3rd Innovation Base, Kangda Road, Meishan Street, Beilun District, Ningbo, China; *and* A1 Building, Beihang National University Science Park, 50 meters south of Qianjiang Road, Xinzhan High-tech Zone, Hefei, Anhui, China; *and* Room B407, Virtual University Park Building, South District, High-tech Zone, Yuehai Street, Nanshan District, Shenzhen, China; *and* Building 1, Science and Technology Innovation Center, High-tech Zone, Nanchang, China; *and* No.18 Daoyuan Road, Science and Technology City, High-tech Zone, Suzhou, China; *and* No. 60, Dong 6th Road, Dongying District, Dongying City, China; *and* Building 9, 99 Haixiu Road, Taizhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	66 FR 24266, 5/14/01. 70 FR 54629, 9/16/05. 75 FR 78877, 12/17/10. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Beijing University of Posts and Telecommunications (BUPT), a.k.a., the following two aliases: —Beijing University of Posts and Telecommunications, Hangzhou Research Institute; *and* —Beijing University of Posts and Telecommunications, Shenzhen Research Institute.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 83420, 12/22/20. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.

Country	Entity	License requirement	License review policy	Federal Register citation
	No. 10 Xitucheng Rd., Haidian District Beijing 100876, China; *and* A210, Virtual University Park Building, South District, High-tech Park, Yuehai Street, Nanshan District, Shenzhen, China; *and* 90 Wensan Road, Xihu District, Hangzhou, Zhejiang, China.			
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	Beijing Zhengyuan Chuangshi Consulting Co., Ltd., Room 410, 4th floor, Building 3, No. 9 Guang'an Road, Fengtai District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d)	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	BGI Research, a.k.a., the following four aliases: —BGI Genomics Institute; —Shenzhen BGI Life Science Research Institute; —Shenzhen Huada Gene Research Inst.; *and* —Shenzhen Huada Gene Research Institute. Building 11 Beishan Industrial Zone Yantian District, Shenzhen, China, 518085.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	BGI Tech Solutions (Hongkong) Co., Ltd., a.k.a., the following three aliases: —BGI Tech Solutions (Hongkong) Co., Ltd.; —Hong Kong Huada Gene Technology Service Co., Ltd.; *and* —Hong Kong Huada Laboratory Co., Ltd. Tai Po Industrial Estate, 16 Dai Fu St Tai Po, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Forensic Genomics International, a.k.a., the following five aliases: —BGI Forensic Technology (Shenzhen) Co., Ltd; —BGI Judicial; —FGI; —Huada Judicial; *and* —Shenzhen Huada Forensic Technology Co., Ltd. Building 11, Beishan Industrial Zone, Yantian District, Shenzhen City, Guangdong, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Galaxy Electronics, Unit 3–4 on 5/F, 26–28 Au Pui Wan Street, Futian Industrial Centre, Fo Tan Shatin, Hong Kong; *and* Block A2 G/F Hoi Bun Industrial 6 Wing Yip Street, Kwun Tong, 07000, Hong Kong; *and* Flat13 8/F Yale Industrial Center 61–63 Au Pui Wan Street Fotan, Hong Kong; *and* Hong Cao Road Rm 314 Block 4 #30, Shanghai, 200233, China; *and* Workshop S&T on 5/F Blk 1 Kin Ho Industrial Building Shatin NT, Hong Kong; *and* Kin Ho Industrial Building Nos 14–24 Shatin, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Gaobeidian Kaituo Precise Instrument Co., Ltd., a.k.a., the following three aliases: —Baoding Kaituo Precision Instrument Manufacturing Co., Ltd.; —Kaituo Precise; *and* —Kaituo Precise Instrument. Industrial CT Machine Industrial Zone, Youyi East Road, Baigou Town, Gaobeidian City, Hebei, China; *and* West of Xingsheng Avenue, Baigou Town, Baoding, Hebei, 074004 China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Harbin Engineering University, a.k.a., the following two aliases: —Harbin Engineering University, Rugao Research Institute *and* —Harbin Engineering University, Yantai Research Institute. No. 145 South Tongda Street, Harbin, Hellongjiang Province, China 150001.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	85 FR 34501, 6/5/20. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Harbin Institute of Technology, a.k.a., the following nine aliases: —Harbin Engineering University, Anshan Industrial & Technology Research Institute; —Harbin Engineering University, Chongqing Research Institute; —Harbin Engineering University, Huizhou Institute of International Innovation; —Harbin Engineering University, Shenzhen Research Institute; —Harbin Engineering University, Weihai Institute of Industrial Technology; —Harbin Engineering University, Wuhu Robot Industry & Technology Research Institute; —Harbin Engineering University, Wuxi Institute of New Materials; —Harbin Engineering University, Yibi Industrial Technology Research Institute; *and* —Harbin Engineering University, Yixing Environmental Protection Research Institute. No. 92 Xidazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 92 West Dazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 2 West Wenhua Road, Weihai, Shandong, China; *and* Pingshan 1st Road, Shenzhen, Guangdong, China; *and* 10th Floor, Block A, Keji South 10 Road, High-tech Zone, Yuehai Street, Nanshan District, Shenzhen, China; *and* No. 17 Shenzhou Road, Office Building of Product Quality Supervision and Inspection Center of National Industrial Robot, Jiujiang Economic and Technological Development Zone, Wuhu City, China; *and* No. 2 West Wenhua Road, Weihai City, China; *and* 501 Lvyuan Road, Environmental Science and Technology Industrial Park, Yixing City, China; *and* Bei Hui Road, Industrial Transformation Cluster Area, Huishan, Wuxi, China; *and* Room 302, No. 9 Gangyuan Avenue, Lingang Economic Development Zone, Yibin City, China; *and* No. 618 Liangjiang Dadao, Longxing Town, Yubei District, Chongqing, China; *and* Management Committee of Huizhou Tonghu Ecological Wisdom Zone, No. 333 Xinhua Avenue, Zhongkai High-tech Zone, Huizhou City, Guangdong Province, China; *and* No. 196 Qianshan Zhong Lu, Anshan City, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 34497, 6/5/20. 87 FR 62202, 10/13/22. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Hongtai Electric Ltd., Room Number 2002, 20th Floor, Building B, Jinsha Winera Plaza, Number 1, Shujin Road, Qingyang District, Chengdu, Sichuan, 610091, China; *and* RMB 14/F Wah Hen Comm Center, 383 Hennessy Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d)	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Inspur Group Co., Ltd., a.k.a., the following two aliases: —Inspur Group; *and* —IGL. No. 1036 Langchao Road, Jinan City, Shandong, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Jotrin Electronics Ltd., 3018 Shennan Mid-Road Unit 3901, Shenzhen, 518031, China; *and* Room G 4th Floor 1st Block Golden Building 152 Fuk Wah Street Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Korchina Logistics (HK) Ltd., 1/F Metex House 24–32 Fui Yiukok Street Tsuen Wan New Territories, Hong Kong; *and* 11014–11016 W 11F ATL Logistics Center B Berth 3 Kwai Chung, Hong Kong; *and* Room 1008E–1010E 1/FL Centre A ATL Logistics Centre Kwai Chung, Hong Kong; *and* 63 Wang Ling Street Flat A 1/F Tsuen Was Industrial Tsuen Wang, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Liang Ping Huang, a.k.a., the following one alias: —Sana Wong. Unit A10, 8/F, Block A, Proficient Industrial Centre, No. 6 Wang Kwun Road, Kowloon Bay, Kowloon, Hong Kong; *and* 11/F, Front Block, Hang Lok Building, 128–130 Wing Lok St., Sheu, Hong Kong; *and* Rm 2318, Dengcheng Plaza, Zhenzhong Road, Futian District, Shenzhen, China; *and* 18th Floor, Building B, Guoli Building, Zhonghang Road, Futian District, Shenzhen, Guangdong, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Loongson Technology, a.k.a., the following four aliases: —Loongson Technology Corporation Limited; —Loongson Zhongke Technology Co., Ltd; —Loongson Zhongke; *and* —Godson Zhongke. Room 101, 1st Floor, Building 4, Yard 7, Dijin Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Luo Dingwen, Room 905 Fubaoxiuyu Business Building A, No. 77 Fuxing Road, Baoding City, Hebei, China; *and* 35 Baihua West Road, New Urban District, Baoding City, Hebei, China; *and* Industrial CT Machine Industrial Zone, Youyi East Road, Baigou Town, Gaobeidian City, Hebei, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Nanjing colpak Mechanical Equipment Co., Ltd., Office No. 1–128, Front Bungalow, 21 Lanqi Street, Qinhuai District, Najing, Jiangsu, 21000, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d)	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd., No. 8, West Longzhong Road, Luhe Economic Development Zone, Nanjing, Jiangsu 211500, China. (See alternate address under Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d)	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Nanjing University of Aeronautics and Astronautics, a.k.a., the following five aliases: —Nanjing University of Aeronautics and Astronautics, Aerospace Engineering Research Institute; —Nanjing University of Aeronautics and Astronautics, Qinhuai Innovation Research Institute; —Nanjing University of Aeronautics and Astronautics, Shenzhen Research Institute; —Nanjing University of Aeronautics and Astronautics, Suzhou Research Institute; *and* —Nanjing University of Aeronautics and Astronautics, Wuxi Research Institute.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 83420, 12/22/2020. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	No. 29 Yudao Street, Nanjing, Jiangsu, China; *and* No. 29 Jiangjun Avenue, Jiangning District, Nanjing, Jiangsu, China; *and* No. 29 Binhe East Road, Liyang, Jiangsu, China; *and* Building 3, Sancai Building, 10 Yongzhi Road, Qinhuai District, Nanjing, China; *and* Building 6, 78 Keling Road, Science and Technology City, High-tech Zone, Suzhou, China; *and* No. 40 Renmin South Road, Luoshe Town, Huishan District, Wuxi, China; *and* Room 218, Zone A, Building R4, Virtual University Park, No. 19, Gaoxin South Fourth Road, Yuehai Street, Nanshan District, Shenzhen, China; *and* No. 69 Feitian Dadao, Jiangning Development Zone, Nanjing, China.			
	Nanjing University of Science and Technology, a.k.a., the following five aliases: —Nanjing University of Science and Technology, Donghai Silicon Material Technology Research Institute; —Nanjing University of Science and Technology, Lianyungang Research Institute; —Nanjing University of Science and Technology, North China Institute; —Nanjing University of Science and Technology, Shuyang Industrial Design and Creative Industry Research Institute; *and* —Nanjing University of Science and Technology, Taizhou Research Institute. No. 200 Xiaolingwei Street, Xuanwu District, Nanjing, Jiangsu, China; *and* No. 89 Wenlan Road, Qixia District, Nanjing, Jiangsu, China; *and* 8 Nujiang Road, Hexi District, Tianjin, China; *and* No. 2, Chenguang Road, Science and Education Entrepreneurship Park, Lianyungang, Jiangsu, China; *and* 3–4 Floor, Building A, Software Industry Building, Shuyang County, Suqian City, Jiangsu, China; *and* Science and Education Entrepreneurship Park, Jingdu Avenue North, Donghai County, Lianyungang, Jiangsu, China; *and* Mechanical Chemical Experimental Building, No. 8, Meilan East Road, Hailing District, Taizhou City, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 83420, 12/22/20. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	National Research Center for Parallel Computer Engineering and Technology, a.k.a., the following one alias: —NRCPC. No. 1 Yinbai Road, Binhu District, Wuxi City, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Northwestern Polytechnical University, a.k.a. the following ten aliases: —Northwest Polytechnic University; —Northwest Polytechnical University; —Northwestern Polytechnic University; —Northwestern Polytechnical University, Beijing Research Institute; —Northwestern Polytechnical University, Chongqing Innovation Center; —Northwestern Polytechnical University, Collaborative Innovation Center; —Northwestern Polytechnical University, Ningbo Research Institute; —Northwestern Polytechnical University, Qingdao Research Institute; —Northwestern Polytechnical University, Shenzhen Research Institute; *and* —Northwestern Polytechnical University, Yangtze River Delta Research Institute.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/9/12. 81 FR 64696, 9/20/16. 84 FR 40241, 8/14/19. 87 FR 62202, 10/13/22. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.

Country	Entity	License requirement	License review policy	Federal Register citation
	127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; *and* Youyi Xi Lu, Xi'an, Shaanxi, China; *and* No. 1 Bianjia Cun, Xi'an, China; *and* West Friendship Rd. 59, Xi'an, China; *and* 3 10 W Apt 3, Xi'an, China; *and* Yard 5, Yangfangdian East Road, Haidian District, Beijing, China; *and* 20th Floor, Block B, Innovation Building, 17 Laodong South Road, Xi'an, China; *and* 25th Floor, Shenzhen Sanhang Technology Building, Northwestern Polytechnical University, No. 45, Gaoxin South 9th Road, Nanshan District, Shenzhen, China; *and* Building 4, Phase II, Qingdao Blue Valley Venture Center, Jimo District, Shandong Province, Qingdao City, China; *and* Lane 218, Qingyi Road, High-tech Zone, Ningbo, China; *and* 27 Zigang Road, Science and Education New Town, Jiangsu Province, Taicang City, China; *and* Building A2, Liangjiang Quaker Headquarters City, No. 598 Liangjiang Avenue, Longxing Town, Yubei District, Chongqing, China; *and* Block A, No. 515 Shennan Road, Minhang District, Shanghai, China.			
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	Qingdao National Laboratory of Marine Science and Technology, a.k.a., the following one alias: —QNLM. 168 Wenhai Middle Rd., Aoshanwei, Jimo District, Qingdao, Shangdong, China, 266237.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Rayscience Optoelectronics Innovation Co., Ltd., 3rd Floor, Building 47, No. 2338, Duhui Road, Minhang District, Shanghai, China; *and* 5F, Building 21, Douhui Road 2338 Lane, Shanghai, China; *and* Ste 306, Building 1, Shennan Road 59, Shanghai, China; *and* Unit 3A, 5F, Far East Consortium Building 21 Des Voeux Road Central HK01, Hong Kong; *and* Flat B 607, 6/F Jumbo Industrial Building, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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	Sichuan University, a.k.a., the following five aliases: —Sichuan University, Institute of Advanced Polymer Materials; —Sichuan University, Luzhou Industrial Technology Research Institute; —Sichuan University, Qingdao Research Institute; —Sichuan University, Suzhou Research Institute; *and* —Sichuan University, Yibin Industrial Technology Research Institute. No. 24 South Section 1, Yihuan Road, Chengdu, China, 610065; *and* No. 29 Jiuyanqiao Wangjiang Road, Chengdu, China, 610064; *and* People's South Road, Chengdu, China, 610041; *and* Shuangliu County, Chuanda Road, Chengdu, China, 610207; *and* Block B, Building 2, Blue Silicon Valley Entrepreneurship Center II, Blue Silicon Valley Core District, Aishanwei Street, Shandong Province, Qingdao City, China; *and* Room 707, Building 5, Public College, No. 377 Linquan Street, Dushu Lake Higher Education Zone, Suzhou, China; *and* Yibin Zone of Sichuan University Park, Second section, West Changjiang North Road, Yibin Lingang Economic and Technological Development Zone, China; *and* No. 264–279, 4th Floor, Area 17, No. 68, Section 1, Yuntai Road, Lingang District, Sichuan Free Trade Zone, China; *and* Jiang'an Campus, Sichuan University, 2nd Section, Chuanda Road, Shuangliu District, Sichuan Province, Chengdu City, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case basis	77 FR 58006, 9/19/12. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Sunton Tech Hong Kong Ltd., a.k.a., the following two aliases: —Sunton Tech (HK) Limited; *and* —Shenzhen Unicom Electronic Technology Limited. Unit A10, 8/F, Block A, Proficient Industrial Centre, No. 6 Wang Kwun Road, Kowloon Bay, Kowloon, Hong Kong; *and* 11/F, Front Block, Hang Lok Building, 128–130 Wing Lok St., Sheu, Hong Kong; *and* Rm. 2318, Dengcheng Plaza, Zhenzhong Road, Futian District, Shenzhen, China; *and* 18th Floor, Building B, Guoli Building, Zhonghang Road, Futian District, Shenzhen, Guangdong, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
	Suzhou Centec Communications Co., Ltd., a.k.a., the following one alias: —Centec Networks (Suzhou) Co., Ltd. Unit 13/16, 4th Floor, Building B, No. 5 Xinghan St., Suzhou Industrial Park, Jiangsu, China; *and* Room 076, 21st Floor, 23rd Floor, Building 22, Shouti South Road, Haidian District, Beijing.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	Suzhou Centec Technology Co., Ltd., Room 201, Building 6, No. 5, Xinghan St., Suzhou Industrial Park, Suzhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
	Tianjin University, a.k.a., the following thirteen aliases: —Tianjin University, Binhai Industrial Research Institute; —Tianjin University, Hefei Institute for Innovation and Development; —Tianjin University, Institute of Medical Robots and Intelligent Systems; —Tianjin University, Jinnan Innovation Research Institute; —Tianjin University, Qingdao Ocean Engineering Research Institute; —Tianjin University, Quanzhou Integrated Circuit and Artificial Intelligence Research Institute; —Tianjin University, Shandong Research Institute; —Tianjin University, Shenzhen Research Institute; —Tianjin University, Sichuan Innovation Research Institute; —Tianjin University, Urban Planning and Design Institute; —Tianjin University, Wuqing Institute of Frontier Technology; —Tianjin University, Zhejiang Research Institute; —Tianjin University, Zhejiang Shaoxing Research Institute; *and* —Tianjin University, Zhongyuan Advanced Technology Research Institute.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 83420, 12/22/20. 88 FR [INSERT FR PAGE NUMBER] 3/6/23.

Country	Entity	License requirement	License review policy	Federal Register citation
	No. 92 Weijin Road, Tianjin, China 300072; *and* Building 2, 1 Xinxing Road, Wuqing Development Zone, Tianjin New Technology Industrial Park, China; *and* Building 1, Entrepreneurship Center (Incubator D plot), Blue Silicon Valley Core District, Qingdao, China; *and* 14th/16th Floor, Integrated Business Building, Hefei Export Processing Zone, Anhui Province (South of Yungu Road, East of Taozhi Road, Hefei Economic Development Zone), China; *and* 51 Lutai Dadao, Zhangdian District, Zibo City, Shandong Province, China; *and* 5th Floor (Science Park), Tianda High-tech Building, 192 Anshan West Road, Nankai District, Tianjin, China; *and* No. 2, Haitai Huakke No. 5 Road, Huayuan Industrial Park (Outside the Ring), Binhai High-tech Zone, Tianjin, China; *and* 15th floor, Quanzhou Software Park Complex Building, Beifeng Street, Fengze District, Quanzhou City, China; *and* A216 Virtual University Park, High-tech Park, Yuehai Street, Nanshan District, Shenzhen, China; *and* No. 11–17–30, Makerspace, 11th Floor, Citizens' Home, Sandajie, New District, Kaifeng City, Henan Province, China; *and* Room 214, Building 3, 48 Jialingjiang Road, Lingang Economic Zone, Tianjin, China; *and* No. 85 Zhongguanxi Road, Zhenhai District, Ningbo City, China; *and* Building B6, District D, Tianfu New Economic Industrial Park, Xinglong Lake, Tianfu New District, Chengdu City, Sichuan Province, China; *and* No. 88, Kangyang Avenue, Hangzhou Bay Shangyu Economic and Technological Development Zone, Shaoxing City, Zhejiang Province, China.			
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	Wuxi Institute of Advanced Technology, Building 2, K-Park Business Center, No. 50 Xiuxi Road, Binhu District, Wuxi City, Jiangsu Province, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR) [4].	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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PAKISTAN	* *	*	* *	*
	Abdul Razaq Asim, Unit 6, 1/F, Munawar Centre, Lahore, Pakistan; *and* 1/F, Sh. Rehmat Ullah Market, 16 Hall Road, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d), and 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
	Add-On Technology, Unit 6, 1/F, Munawar Centre, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
	Dynamic Engineers, 1/F, Sh. Rehmat Ullah Market, 16 Hall Road, Lahore, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of the EAR.	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
	* *	*	* *	*
	Nanjing Jiuding Refrigeration & Air-conditioning Equipment Co., Ltd., 107 Sughra Tower, F–11 Markaz Islamabad Pakistan. (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d)	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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RUSSIA	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	DMT Electronics, a.k.a., the following four aliases: —DMT Electronics, JSC; —DMT Elektroniks AO; —Joint Stock Company DMT Electronics; *and* —ZAO DMT Elektroniks. Panfilovskiy Prospekt, 10, FL 3 Room 430, Zelenograd, Moscow, Russia, 124460; *and* 527, 10 Panfilovsky, Zelenograd, Moscow, Russia 124060.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
*	* * *	*	*	*
TAIWAN	* *	*	*	*
	Neotec Semiconductor Ltd., a.k.a., the following one alias: —Xinde Technology. 4F–1., No. 32, Taiyuan St., Hsinchu County 302, Zhubei City, Taiwan; *and* Tai Yuen Industrial Park 32 Tai Yuen St FL 4 No Zhubei, Wallis and Futuna 302, Taiwan; *and* 4f No. 32 Taiyuan St. Chupei City, 30265, Taiwan.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER] 3/6/23.
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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–04558 Filed 3–2–23; 4:15 pm]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1220

[Docket No. CPSC–2019–0025]

Safety Standard for Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2010, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a consumer product safety standard for non-full-size baby cribs (NFS cribs) pursuant to section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The Commission's mandatory standard incorporated by reference the ASTM voluntary standard that was in effect for NFS cribs at the time, with modifications to make the standard more stringent, to further reduce the risk of injury associated with NFS cribs, and to exclude sections of the ASTM voluntary standard inapplicable to NFS cribs. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. In November 2022, ASTM published a revised voluntary standard for NFS cribs, and it notified the Commission of this revised standard in December 2022. This direct final rule updates the mandatory standard for NFS cribs to incorporate by reference ASTM's 2022 version of the voluntary standard for NFS cribs.

DATES: The rule is effective on June 3, 2023, unless the Commission receives a significant adverse comment by April 5, 2023. If the Commission receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 3, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2019–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2019–0025, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone 301–504–6820; email: *kwalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Background [1]

A. Statutory Authority [2]

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products [3] and to adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be ''substantially the same as'' the voluntary standard, or it may be ''more stringent than'' the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA also specifies the process for when a voluntary standards organization revises a standard that the Commission has incorporated by reference under section 104(b)(1). 15 U.S.C. 2056a(b)(4)(B). First, the voluntary standards organization must notify the Commission of its revised voluntary standard. Once the Commission receives that notification, the Commission may reject or accept the revised voluntary standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of notification, that it has determined that the revised voluntary standard does not improve the safety of the consumer product covered by the standard, and that the Commission is retaining the existing mandatory standard. If the Commission does not take this action to reject the revised voluntary standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

Additionally, section 104(c) of the CPSIA contains special provisions for rules regarding cribs, including NFS cribs. Sections 104(c)(1) and (2) make the standards the Commission adopts for cribs under section 104(b) of the CPSIA enforceable against a larger class of parties than are ordinarily subject to section 104 rules.[4] 15 U.S.C. 2056a(c)(1), (2). However, Congress later limited this expanded application of crib standards. Section 104(c)(3) of the CPSIA, added in 2011, limits the application of crib rule updates adopted through the section 104 process to manufacturers or importers of cribs, unless the Commission determines that application to any other person described in section 104(c)(2) is ''necessary to protect against an unreasonable risk to health or safety.'' 15 U.S.C. 2056a(c)(3); Public Law 112–28, 125 Stat. 273 (Aug. 12, 2011). Based on the lack of incident data related to cords and straps for NFS cribs, as discussed in staff's briefing package,[5] the Commission is not making this determination for the current revision to the NFS cribs rule.[6] Accordingly, as specified in CPSIA section 104(c)(3), this direct final rule applies only to persons that manufacture or import cribs.

B. Safety Standard for NFS Cribs

On December 28, 2010, under section 104 of the CPSIA, the Commission published the first NFS cribs rule that incorporated by reference ASTM F406–10a, *Standard Consumer Safety Specification for Non-Full-Size Cribs/Play Yards,* as the mandatory standard, with modifications to the standard to further reduce the risk of injury. 75 FR 81766, at 81780. That new 16 CFR part 1220 excluded sections of ASTM F406 that apply solely to play yards, which are not covered by part 1220 but are incorporated into a separate rule for play yards, 16 CFR part 1221. *Id.*

Section 1220.1(c)(1) defines a NFS crib as a bed that is:

- Designed to provide sleeping accommodations for an infant;
- Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes;
- Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49¾ in.), or, an interior width dimension either greater than 77.7 cm (30⅝ in.) or smaller than 64.3 cm (25⅜ in.), or both; and
- Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs).

16 CFR 1220.1(c)(1).

The rule further states that NFS cribs include, but are not limited to, portable cribs, crib pens, specialty cribs, undersize cribs, and oversize cribs, as these products are defined in the rule. *Id.* Generally, the NFS cribs rule applies to rigid-sided cribs, while the play yard rule applies to mesh-sided products.

CPSC has twice before updated the NFS cribs rule, adopting ASTM F406–17 in 2018 (83 FR 26206 (June 6, 2018)), and adopting ASTM F406–19 in 2019 (84 FR 56684 (Oct. 23, 2019)). In both cases, CPSC accepted the revised voluntary standard as the mandatory standard for NFS cribs, and updated the incorporation by reference in 16 CFR part 1220 to reflect the revised voluntary standard. In both cases, CPSC also maintained the exceptions listed in § 1220.2(b), which lists sections of the voluntary standard that solely apply to play yards.

On December 5, 2022, ASTM notified the Commission that it had approved and published a newly revised version of the voluntary standard, ASTM F406–22. On December 15, 2022, the Commission published in the **Federal Register** a Notice of Availability, requesting comment on whether the revision improves the safety of NFS baby cribs and/or play yards (87 FR 76614). The public comment period closed on December 29, 2022. CPSC received eight comments, four of which, in supporting the revised voluntary standard, discussed the safety of modified requirements for cords and straps that apply to NFS baby cribs; the remaining comments addressed only play yard safety. Per the statute, the revised voluntary standard will take effect as the new mandatory standard for NFS cribs on June 3, 2023, unless the Commission specifies a later date in the **Federal Register** or notifies ASTM by March 5, 2023, that it has determined the revision does not improve the safety

[1] On February 22, 2023, the Commission voted (4–0) to publish this direct final rule.

[2] This direct final rule is based on information and analysis contained in the February 15, 2023, Staff Briefing Package: ASTM's Notice of a Revised Voluntary Standard for Non-Full Size Baby Cribs (16 CFR part 1220), available at: *https://www.cpsc.gov/s3fs-public/ASTMs-Notice-of-a-Revised-Voluntary-Standard-for-Non-Full-Size-Cribs.pdf?VersionId=tWRFQSh1k.v1WI3fQKfaQSAunGczu1k.*

[3] Section 104(f)(2)(A) of the CPSIA lists NFS cribs as a durable infant or toddler product. 15 U.S.C. 2056a(f)(2)(A).

[4] Section 104(c) prohibits the following parties from manufacturing, selling, contracting to sell or resell, leasing, subletting, offering, providing for use, or otherwise placing in the stream of commerce a crib that is not in compliance with a standard promulgated under section 104(b): ''any person that—(A) manufactures, distributes in commerce, or contracts to sell cribs; (B) based on the person's occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes; (C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or (D) owns or operates a place of accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) applied without regard to the phrase 'not owned by the Federal Government').'' 15 U.S.C. 2056a(c)(2).

[5] *See* Staff's Briefing Package at p.6, stating that staff reviewed NFS crib incident data since August 2019 and found no incidents associated with cords or straps.

[6] CPSC has twice before updated the NFS cribs rule and likewise did not make this determination in either update. 83 FR 26206 (June 6, 2018); 84 FR 56684 (Oct. 23, 2019).

of NFS baby cribs. 15 U.S.C. 2056a(b)(4)(B).

As explained in section II.A of this preamble, ASTM F406–22 contains two substantive revisions to the voluntary standard that improve the safety of NFS cribs. One modification addresses a strangulation hazard by clarifying the requirements and testing of cords and straps on NFS cribs, and the other modification expands the scope of the voluntary standard to include products that are marketed for play, or sleep, or both. Part II.B of this preamble describes non-substantive clarifications in the revised voluntary standard. Based on staff's evaluation of ASTM F406–22 and consideration of the public comments, the Commission will allow ASTM F406–22 to become the new consumer product safety standard for NFS baby cribs because it improves safety. ASTM F406–22 will become the mandatory consumer product safety standard for NFS cribs on June 3, 2023. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1220 to incorporate by reference the applicable provisions of the revised voluntary standard, ASTM F406–22, with modifications that maintain the exclusion of requirements that apply solely to play yards.

II. Description of ASTM F406–22 Related to NFS Cribs

The ASTM standard for NFS cribs includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to infants associated with NFS cribs. The December 2022 revision to the voluntary standard, ASTM F406–22, includes substantive and non-substantive revisions, as described in section II.A and B.

A. Substantive Changes in ASTM F406–22

1. Length of Cords/Straps

NFS cribs and their attaching accessories may feature cords/straps intended for various purposes, such as securing and attaching an accessory to the NFS crib's frame. Cords or straps, when either connected or entangled together, may form a loop that presents the risk of strangulation around the neck. To reduce this hazard, ASTM F406–19 specifies requirements for accessories, as defined in section 3.1.1 and 3.1.4 of ASTM F406–19,[7] that have cords/straps that can form a loop; the perimeter length of these cords/straps is limited to no more than 16.3 inches.[8] ASTM F406–22 makes this requirement a general requirement, so that the cord length limit now applies to the whole of in-scope products and not just to the attachment of accessories. ASTM F406–22 limits the maximum permissible perimeter length of a loop such that the standard small head probe, which is based on the head circumference of a 5th percentile 6-month-old child, cannot fit through the loop, thus preventing a strangulation hazard. This change now makes all cords/straps, whether attached to the NFS crib or to an accessory feature, subject to the loop requirement.

ASTM F406–22's loop requirement also addresses connecting cords/straps, such as shown in Figure 1 below. The limit on cord/strap length is intended to prevent a small infant's head, represented by the standard small head probe, from fitting through the loop. ASTM F406–19 limits the free length of any single cord/strap attached to the NFS baby crib to no more than 7.4 inches (section 5.13.1 of ASTM F406–19). Thus, if two straps are attached end-to-end, they cannot form a loop greater than 14.8 inches, which is too small for the standard small head probe. However, products may feature two straps that are attached to the product, separated by a distance L, that can connect to form a loop, as shown in Figure 1. The loop formed by the straps, in addition to the distance L, may exceed the 16.3 inch perimeter length of the standard small head probe. To address the potential for strangulation, ASTM F406–22 states that the length of a loop is in ''conjunction with the product,'' and measures the perimeter length to include the distance L, as shown in Figure 1.

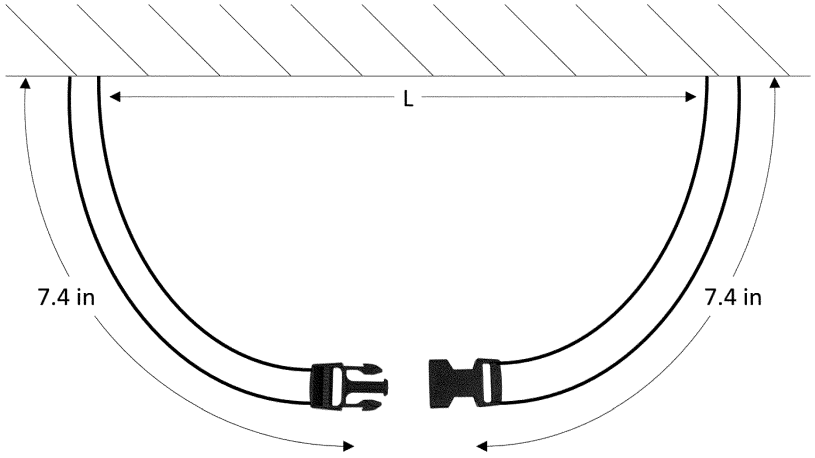

Figure 1. Example of two cords/straps that can form a loop

Adjustable straps, buckles, or other hardware can increase the perimeter of a cord or loop. ASTM F406–19 does not specify testing requirements for such hardware. ASTM F406–22 clarifies and improves the test method in section 8.24.1 to measure the free-hanging length of single cords/straps, now stating: ''Using a ¾ in. (19 mm)

[7] Examples of NFS baby crib accessories include bassinets or changing tables that attach to the top rail of the frame.

[8] ASTM F406–22 defines a ''cord'' as a length of slender flexible material, including monofilaments, rope, woven and twisted cord, plastic and textile tapes, ribbon, and materials commonly called string. ASTM F406–22 defines a ''strap'' as a piece of flexible material of which the width is significantly greater than the thickness.

diameter clamping surface (Fig. A1.29), gradually apply a 5 lbf (22 N) force to the end of each cord/strap in its fully-extended configuration.'' Testing a strap to ''its fully-extended configuration'' ensures that a strap with an adjustable length and a sliding buckle is tested to the strap's maximum length. The update also adds that any hardware attached to the cords/straps, such as buckles, should be included in the length measurement. Lastly, the update specifies that if multiple cords/straps attach to the product in the same location (*i.e.,* distance L = 0 in Figure 1 above), they should be treated as separate and measured individually.

Although staff found no incidents related to cords/straps on NFS cribs, the Commission finds that the updates to the cord/strap requirements in ASTM F406–22 are an improvement in safety. The loop requirement that addresses a strangulation risk, and previously was applicable only to cords/straps attached to accessories in ASTM F406–19, is now a general requirement that applies to all parts of in-scope products. The changes to the free-length measurement test method also improve safety by including adjustable straps, buckles, and other hardware in the length measurement.

2. Scope

Section 1.2 of ASTM F406–19 defines the standard's scope: ''This specification covers a framed enclosure with a floor made for the purpose of providing sleeping and playing accommodations for a child who cannot climb out and is less than 35 in. (890 mm) in height.'' Based on this scope, products that are intended to be used only for play and not for sleep can be excluded from the requirements of the F406–19 standard, and therefore may be hazardous. To cover these products, ASTM F406–22 revises the phrase ''sleeping and playing accommodations'' to ''sleeping or playing accommodations, or both.'' This, for example, prevents manufacturers from attempting to exempt their products from the standard by specifying the product is exclusively intended for play. This change in ASTM F406–22 is an improvement in safety.

B. Non-Substantive Changes in ASTM F406–22

1. Accessories Definitions and Entrapment in Accessories Requirements

ASTM F406–22 adds multiple definitions for various types of NFS baby crib accessories, including ''play yard/non-full-size crib dependent accessories'' (section 3.1.23), ''full accessories'' (section 3.1.23.1), ''full bassinet accessories'' (section 3.1.23.2), and ''bassinet dependent accessories'' (section 3.1.23.3).[9] ASTM F406–19, in contrast, provides only one general definition for accessories (section 3.1.1). ASTM F406–22 also revises section 5.15 *Entrapment in Accessories* to clarify the types of accessories to which the requirements apply. In ASTM F406–19, the section 5.15 requirements provided a lengthy description stating that these requirements do not apply to accessories that make the non-full-size crib/play yard unusable when the accessory is assembled.[10] ASTM F406–22 now defines these types of accessories as full accessories (section 3.1.23.1) and removes their description from section 5.15, resulting in a shorter, more concise description. Other than these clarifications, the requirements that address entrapment in accessories remain the same. These changes are safety neutral.

2. Mattress Exception for Products Designed Exclusively for Play

ASTM F406–22 moves from a note to a new requirement (section 5.16.1) the language that a mattress is not required to be provided with a product if the product is designed exclusively for play and not for sleep and is intended to be used without a mattress. This change has no effect on safety.

3. Minor Editorial Changes

ASTM F406–22 includes the following editorial changes that have no effect on safety:

- In section 8.26, replaces ''play yard'' and ''non-full-size crib'' with ''product'';
- Globally changes values given with a tolerance to include units for the nominal value (*e.g.,* 27 ± 2 lbf changed to 27 lbf ± 2 lbf); and
- Globally changes two-dimensional measurements to include units for all values (*e.g.,* 2-by-2in. changed to 2-in. by 2-in.).

C. Public Comments

The Commission requested public comment on how the revisions to ASTM F406–22 affect the safety of NFS cribs. Three commenters (Iron Mountains, Independent Safety Consulting, and the Juvenile Products Manufacturers Association) stated that the addition of a general requirement for cords/straps that can form a loop improves the safety of NFS cribs. The commenters noted that previously the requirement only restricted the free length of stretched cords/straps to no more than 7.4 inches, but the new requirement is an added protection from the risk of cords/straps that can form a loop. Consumer and Hazardous Product Safety Directorate, Health Canada stated in its comments that the cords/straps requirement aligns with Canada's current regulations for play yards, cribs, cradles, and bassinets. The Commission agrees with the commenters that the addition of a general requirement for cords/straps that can form a loop improves safety. The loop requirement, which was previously only applicable to cords/straps attached to accessories in ASTM F406–19, is now a general requirement that applies to all parts of in-scope products, reducing the risk of strangulation on cords and straps.

D. Assessment of ASTM F406–22

Under CPSIA section 104(b)(4)(B), unless the Commission determines that ASTM's revision to a voluntary standard that is referenced in a mandatory standard ''does not improve the safety of the consumer product covered by the standard,'' the revised voluntary standard becomes the new mandatory standard. The Commission concludes that the substantive changes in ASTM F406–22 related to NFS baby cribs improve the safety of NFS cribs. The requirements addressing loops formed by cords and straps, which were previously only applicable to accessories, are now provided as a general requirement that reduces the strangulation hazard for all cords/straps anywhere on the product. Moreover, changes to the scope of the voluntary standard clarify the coverage of applicable provisions of the standard to all NFS cribs.

III. Incorporation by Reference

Section 1220.2(a) of the direct final rule incorporates by reference ASTM F406–22. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section II of this preamble, Description of ASTM F406–22 Related

[9] ''Full accessories'' are essentially accessories that fully cover the top opening of the product, ''full bassinet accessories'' are essentially elevated ''full accessories'' and ''bassinet dependent accessories'' are accessories to ''full bassinet accessories.''

[10] For example, an accessory such as a bassinet that covers the entire opening of the NFS baby crib will make the lower portion of the product unusable when the accessory in installed.

to NFS Cribs, summarizes the revised provisions of ASTM F406–22 that the Commission incorporates by reference into 16 CFR part 1220. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy of ASTM F406–22 is available for viewing on ASTM's website at: *https://www.astm.org/CPSC.htm.* Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Additionally, interested parties can purchase a copy of ASTM F406–22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *www.astm.org.* Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

IV. Testing and Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers, including importers, of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Additionally, because NFS cribs are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products for compliance with 16 CFR part 1220. Products subject to part 1220 also must be compliant with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[11] the phthalates prohibitions in section 108 of the CPSIA [12] and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,[13] and the consumer registration form requirements in section 104(d) of the CPSIA.[14] In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies (third party labs) for testing NFS cribs, and codified the requirement at 16 CFR 1112.15(b)(6).

The modifications to the straps and cord requirements for NFS cribs in ASTM F406–22 use testing requirements that are substantially the same as existing requirements for cords and straps on accessories. Accordingly, the new cord/strap requirements do not require that labs obtain additional test equipment or new training. The Commission considers third party labs that are currently CPSC-accepted for 16 CFR part 1220 to have demonstrated competence to test NFS cribs to the revised ASTM F406–22, as incorporated into part 1220. Accordingly, the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. The existing NOR for the Safety Standard for Non-Full-Size Baby Cribs will remain in place, and CPSC-accepted third party labs are expected to update the scope of their accreditations to reflect the revised NFS cribs standard in the normal course of renewing their accreditations.

V. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B).

The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F406–22 takes effect as the new CPSC standard for NFS cribs, even if the Commission does not issue this rule. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments. We note that CPSC did not receive any adverse comments based on the Notice of Availability, as reviewed in section II.C of this preamble.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on June 3, 2023. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that the rule ''would be ineffective or unacceptable without change.'' 60 FR 43108, 43111. As noted, this rule updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section V of this preamble regarding the Direct Final Rule Process, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. The Commission also notes the limited nature of this

[11] 15 U.S.C. 1278a.

[12] 15 U.S.C. 2057c.

[13] 15 U.S.C. 2063(a)(5).

[14] 15 U.S.C. 2056a(d).

document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

VII. Paperwork Reduction Act

The current mandatory standard for NFS cribs includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The revised mandatory standard for NFS cribs does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1220, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

VIII. Environmental Considerations

The Commission's regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

IX. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

X. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the revised standard for NFS cribs. Therefore, ASTM F406–22 automatically will take effect as the new mandatory standard for NFS cribs on June 3, 2023, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice, the rule will become effective on June 3, 2023.

XI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.''Pursuant to the CRA, OIRA has determined that this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1220

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Safety, and Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1220—SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS

■ 1. Revise the authority citation for part 1220 to read as follows:

Authority: 15 U.S.C. 2051 Notes; 15 U.S.C. 2056a.

■ 2. Revise § 1220.2 to read as follows:

§ 1220.2 Requirements for non-full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F406–22, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards,* approved on October 1, 2022. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* A free, read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.*

(b) Comply with the ASTM F406–22 standard with the following exclusions:

(1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F406–22.

(2) Do not comply with section 5.16.2 through 5.16.2.2 of ASTM F406–22.

(3) Do not comply with sections 5.19 through 5.19.2.2 of ASTM F406–22.

(4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products,* of ASTM F406–22.

(5) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F406–22.

(6) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F406–22.

(7) Do not comply with sections 8.14 through 8.14.2 of ASTM F406–22.

(8) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F406–22.

(9) Do not comply with section 8.16 through 8.16.3 of ASTM F406–22.

(10) Do not comply with sections 8.28 through 8.28.3.2 of ASTM F406–22.

(11) Do not comply with sections 8.29 through 8.29.3 of ASTM F406–22.

(12) Do not comply with sections 8.30 through 8.30.5 of ASTM F406–22.

(13) Do not comply with sections 8.31 through 8.31.9 of ASTM F406–22.

(14) Do not comply with sections 9.3.2 through 9.3.2.4 of ASTM F406–22.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–04398 Filed 3–3–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–716]

Schedules of Controlled Substances: Placement of Brorphine in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing 1–(1–(1–(4-bromophenyl)ethyl)piperidin-4–yl)–1,3-dihydro-2*H*-benzo[*d*]imidazol-2-one (commonly known as brorphine), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961). This action continues to impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or propose to handle brorphine.

DATES: Effective April 5, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs (Single Convention), March 30, 1961, 18 U.S.T. 1407, 570 U.N.T.S. 151, as amended. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1)), of the Controlled Substances Act (CSA), if control of a substance is required ''by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,'' the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C. 811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (Administrator). 28 CFR 0.100.

Background

On March 1, 2021, Drug Enforcement Administrator (DEA) issued a temporary scheduling order, placing brorphine [1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2*H*-benzo[*d*]imidazol-2-one] in schedule I of the Controlled Substances Act (CSA). 86 FR 11862. That order was based on findings by the Acting Administrator of DEA (Acting Administrator) that the temporary scheduling of this substance was necessary to avoid an imminent hazard to the public safety; the order was codified at 21 CFR 1308.11(h)(49).

In November 2021, the Director-General of the World Health Organization (WHO) notified the Secretary-General of the recommendation, from the 44th meeting of WHO's Expert Committee on Drug Dependence, that brorphine be placed in Schedule I of the Single Convention, as this substance has an opioid mechanism of action and similarity to drugs that are controlled in Schedule I of the Single Convention (*i.e.,* brorphine is similar to drugs such as morphine and fentanyl) and has dependence and abuse potential. On May 27, 2022, the United States government was informed by the Secretariat of the United Nations, by letter, that during its 65th session in March 2022, the Commission voted to place brorphine in Schedule I of the Single Convention (CND Mar/65/1).

Brorphine

As discussed in the background section, brorphine is temporarily controlled in schedule I of the CSA upon the Acting Administrator's finding it poses imminent hazard to the public safety. Brorphine has a pharmacological profile similar to fentanyl (schedule II) and other schedule I and II synthetic opioids that act as mu-opioid receptor agonists. Because of the pharmacological similarities of brorphine to heroin (schedule I) and fentanyl (schedule II), a potent mu-opioid agonist, the use of brorphine presents a high risk of abuse and has negatively affected users and communities. The abuse of brorphine has been associated with at least 21 fatalities in the United States between August 2019 and June 2021.[1] [2] The positive identification of this substance in many post-mortem cases is a serious concern to the public safety.

Brorphine on the illicit drug market has been reported in Canada, Estonia, Germany, Latvia, Sweden, and the United States since April 2019.[3] Law enforcement reports demonstrate that brorphine is being illicitly distributed and abused. According to the National Forensic Laboratory Information System (NFLIS-Drug) database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State and local forensic laboratories, there have been 157 reports for brorphine between April 2020 and June 2022 [4] (query date: July 6, 2022).

DEA is not aware of any claims or any medical or scientific literature suggesting that brorphine has a currently accepted medical use in treatment in the United States. In addition, the Department of Health and Human Services advised DEA, by letter dated October 27, 2020, that there were no investigational new drug applications or approved new drug applications for brorphine in the United States. Because brorphine is not formulated or available for clinical use as an approved medicinal product, all current use of this substance by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such a drug.

Therefore, consistent with 21 U.S.C. 811(d)(1), DEA concludes that brorphine has no currently accepted medical use in treatment in the United States [5] and

[1] Vohra V, King AM, Jacobs E, Aaron C. Death associated with brorphine, an emerging novel synthetic opioid. Clin Toxicol (Phila). 2021, 59:851–852.

[2] Krotulski AJ, x Krotulski AJ, Papsun DM, Noble C, Kacinko SL, Nelson L, Logan BK. Public Health Alert: The Rise of Brorphine—A Potent New Synthetic Opioid Identified in the Midwestern United States. CFSRE—NPS Discovery, 2020.

[3] Health Canada Drug Analysis Service (2019); Analyzed Drug Report Canada 2019—Q3 (July to September); European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2020); EU Early Warning System Situation Report, Situation report—June 2020.

[4] Reports for NFLIS-Drug are still pending for 2022.

[5] Although, as discussed above, there is no evidence suggesting that brorphine has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with

is most appropriately placed in schedule I of the CSA, the same schedule in which it currently resides. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to schedule brorphine pursuant to 21 U.S.C. 811(a).

Conclusion

In order to meet the United States' obligations under the Single Convention and because brorphine has no currently accepted medical use in treatment in the United States, the Administrator has determined that brorphine, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, should remain in schedule I of the CSA.

Requirements for Handling

Brorphine has been controlled as a schedule I controlled substance since March 1, 2021. Upon the effective date of the final order contained in this document, brorphine will be permanently subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture of, distribution of, importation of, exportation of, engagement in research or conduct of instructional activities with, and possession of, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research or conducts instructional activities with, or possesses) or who desires to handle brorphine must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Brorphine must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* Brorphine is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling brorphine must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of brorphine must be in compliance with 21 U.S.C. 825 and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture brorphine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of brorphine has been required to keep an inventory of all stocks of this substance on hand as of March 1, 2021, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to brorphine pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), 1307.11, and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding brorphine to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute brorphine must continue to comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of brorphine must continue to be in compliance with 21 U.S.C. 952, 953, 957, and 958 and in accordance with 21 CFR parts 1304, 1312, and 1317.

10. *Liability.* Any activity involving brorphine not authorized by, or in violation of the CSA, is unlawful and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This action is not a significant regulatory action as defined by Executive Order (E.O.) 12866 Regulatory Planning and Review, section 3(f), and the principles reaffirmed in E.O. 13563 Improving Regulation and Regulatory Review; and, accordingly, this action has not been reviewed by the Office of Management and Budget. This action makes no change in the status quo, as brorphine is already listed as a schedule I controlled substance.

Executive Order 12988, Civil Justice Reform

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This action does not have federalism implications warranting the application of E.O. 13132. This action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications warranting the application of E.O. 13175. The action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Administrative Procedure Act

The CSA provides for an expedited scheduling action where control is required by the United States' obligations under international treaties, conventions, or protocols. 21 U.S.C. 811(d)(1). If control is required pursuant to such international treaty, convention, or protocol, the Attorney General, as delegated to the Administrator, must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, and ''without regard to'' the findings and rulemaking procedures

respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

otherwise required for scheduling actions in 21 U.S.C. 811(a) and (b).

In accordance with 21 U.S.C. 811(d)(1), scheduling actions for drugs that are required to be controlled by the United States' obligations under international treaties, conventions, or protocols in effect on October 27, 1970 shall be issued by order (as opposed to scheduling by rule pursuant to 21 U.S.C. 811(a)). Therefore, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this scheduling action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this final order from notice and comment. Consequently, the RFA does not apply to this action.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This order is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:
■ a. Redesignate paragraphs (b)(22) through (93) as paragraphs (b)(23) through (94), respectively;
■ b. Add new paragraph (b)(22); and
■ c. Remove and reserve paragraph (h)(49).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(22) brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2*H*-benzo[*d*]imidazol-2-one)	9098

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on February 27, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–04364 Filed 3–3–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 11813]

RIN 1400–AE81

Visas: Procedures for Issuing Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is updating its regulation regarding visa applicants' furnishing of signed photographs as required under Section 221(b) of the Immigration and Nationality Act. These updates reflect changes in technology, including the ability to upload digital photographs electronically as part of the online visa application process.

DATES: This final rule is effective on April 5, 2023.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Regulatory Coordinator, Visa Services, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485–7586.

SUPPLEMENTARY INFORMATION:

What changes is the Department making?

This rule clarifies that immigrant and nonimmigrant visa applicants may upload digital photographs electronically as part of the online visa application process in lieu of submitting ink-signed photographs. The electronic signature on the DS–160, Online Nonimmigrant Visa Application, or the biometric signature for the DS–260, Online Application for Immigrant Visa and Alien Registration, pursuant to 22 CFR 41.103(a) or 42.67(a)(3) respectively, shall be considered as signing the digital photograph and any paper photographs that may be otherwise submitted. Additionally, this rule amends the language concerning the nonimmigrant photograph to clarify that the submitted photograph must meet the specifications prescribed by the Department and deletes language allowing immigrant visa applicants to submit black and white photographs.

Why is the Department promulgating this rule?

Section 221(b) of the Immigration and Nationality Act, 8 U.S.C. 1201(b), states that ''[e]ach alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required.'' 22 CFR 41.103(a)(1) requires every noncitizen seeking a nonimmigrant visa to make an electronic application on Form DS–160, the Online Nonimmigrant Visa Application, or, as directed by a consular officer, an application on Form DS–156, Nonimmigrant Visa Application. Applicants must sign the Form DS–160 electronically by clicking the box designated ''Sign Application'' in the certification section of the application. The Form DS–160 is the electronic version of the nonimmigrant visa application, while the Form DS–156 is the paper-based nonimmigrant visa application and can only be used in limited circumstances.

Generally, immigrant visa applicants must make an electronic application on Form DS–260, the Online Application for Immigrant Visa and Alien Registration, or, as directed by the consular officer, an application on Form DS–230, Application for Immigrant Visa or Alien Registration. Applicants must sign the Form DS–260 electronically by clicking the box designated ''Sign Application'' in the certification section of the application. Additionally, an immigrant visa applicant submitting a Form DS–260 is required at the time of the interview to swear to or affirm the application and biometrically sign the application.

The purpose of this rule is to remove an outdated sentence from 22 CFR 41.105(a)(3), which requires nonimmigrant visa applicants to ''sign (full name) on the reverse side of the photographs'' and to clarify that electronic and/or biometric signature of the appropriate visa application is deemed the signature on all submitted photographs, either digitally or on paper. In the late 1990s, the Department began the modernization of its visa adjudication and issuance systems and procedures. Part of that initiative involved digitizing the photograph collection process. During this time, the consular officers began to scan the paper photographs provided by nonimmigrant visa applicants and return the photographs to the applicant, using the scanned copy for all adjudication and recordkeeping purposes. In 2010, the Department announced that it would be transitioning from a paper-based application process to an electronic/online application process. As a part of this transition, the Department also transitioned to a combination of electronic signature (''click and submit'' signature) and biometric signature as well as online digital photograph collection. The digital photograph was rolled out slowly, with some posts adopting digital photograph collection simultaneously with the online application, while some posts delayed the digital photograph collection until their applicant pool adjusted to the online application procedure. As of 2021, nearly all posts use the digital photo collection tool as part of the online nonimmigrant visa application process. Digital photo collection reduces administrative burdens on consular posts, which otherwise would have to scan physical photographs for hundreds to thousands of visa applicants each day, and on applicants who no longer need to provide physical copies of their photographs. In cases where an applicant is unable to upload a photo that meets the specific requirements, the applicant may submit a printed photo to the U.S. embassy or consulate where they are applying for a visa. Under the Modernized Immigrant Visa (MIV) processing, applicants can upload a photograph as part of the required documentation along with the DS–260. For non-MIV paper-based immigrant visa cases, applicants may still bring a paper photograph at the time of interview which is then scanned and uploaded. Immigrant visa applicants may also be required to supply additional photographs at the time of their interview; those photographs may be included in the paper-based immigrant visa packet that the individual carries with them when they travel to the United States. The applicants then hand the completed packets to the Department of Homeland Security. MIV cases do not require paper packets and are digitally processed.

Under existing Department practice, submission of a digital photograph along with an online visa application that the applicant signs electronically or biometrically is sufficient to meet the requirement of furnishing signed photographs under INA section 221(b), 8 U.S.C. 1201(b). This rule would not change current practice, but only clarify the regulation to reflect this option.

Additionally, the Department is revising the immigrant and nonimmigrant visa photograph rules for consistency. Longstanding practice for digital and paper photographs is consistent for both immigrant and nonimmigrant applicants but regulations are inconsistent as to technical requirements. To clarify this potential inconsistency and to ensure that the Department can readily collect photographs that reflect current best practices, the Department is revising nonimmigrant requirements to be consistent with the immigrant requirements. The Department is also deleting from the immigrant visa photo rule language that allowed for the submission of black and white photographs. That language is outdated, and the Department is not aware of any country where the submission of color photographs is unavailable.

Regulatory Findings

Administrative Procedure Act

This rule is issued without prior notice and comment pursuant to the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A), because it re-states existing agency procedure or practice. As noted in the Preamble, under existing Department practice, submission of a digital photograph, along with an online visa application that the applicant signs electronically, is already considered sufficient to meet the requirement of furnishing signed photographs under INA section 221(b), 8 U.S.C. 1201(b). The purpose of this rule is to align the regulatory text with this existing Department practice and interpretation of 8 U.S.C. 1201(b). Therefore, the Department is issuing this amendment as a final rule. In accordance with the APA, it is effective 30 days after publication.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804(2), for purposes of congressional review of agency rulemaking under the Congressional Review Act. At this time, the Department does not believe that this rule will result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866, and 13563: Reducing Regulation and Controlling Regulatory Cost

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563, and has determined that the benefits of this regulation, *i.e.,* updating these rules to account for modern technological advancements, outweigh any cost, which the Department assesses to be minimal.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or record-keeping requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 41

Aliens, Employment, Foreign Officials, Immigration, Students, Passports and Visas.

22 CFR Part 42

Aliens, Immigration and Visas.

Accordingly, for the reasons stated in the preamble, 22 CFR parts 41 and 42 are amended as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1182(d); 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295); 112 Stat. 2681–795.

■ 2. Amend § 41.105 by revising paragraph (a)(3) to read as follows:

(a) § 41.105 Supporting documents and fingerprinting.* * *

(3) *Photographs required.* Every applicant for a nonimmigrant visa must furnish photographs of the number and specification prescribed by the Department. The applicant must either upload a digital photograph electronically as part of submitting an online visa application or submit a paper photograph at the direction of the Department or consular officer. The photograph shall be considered signed when the applicant signs the appropriate application form pursuant to § 41.103(b)(3).

* * * * *

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111–287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

■ 4. Amend § 42.65 by revising paragraph (f) to read as follows:

§ 42.65 Supporting documents.

* * * * *

(f) *Photographs.* Every applicant shall furnish photographs of the number and specifications prescribed by the Department. The applicant must either upload a digital photograph electronically as part of submitting an online visa application, or a paper photograph at the direction of the Department. The photograph shall be considered signed when the applicant biometrically signs and executes the application under oath pursuant to § 42.67(a).

Zachary Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2023–04405 Filed 3–3–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2021–0568; FRL–9779–02–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–3.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on May 5, 2023. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on March 20, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers

are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the dockets?

The dockets include information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0568, is available at *https://www.regulations.gov* and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for certain chemical substances which were the subject of PMNs. Previously, EPA proposed SNURs for these chemical substances and established the record for these SNURs in the following **Federal Register** and docket ID number:

- June 24, 2022 (87 FR 37783) (FRL–9779–01–OCSPP); Docket ID No. EPA–HQ–OPPT–2021–0568.

EPA will address finalizing the proposed SNURs for certain chemical substances not included in this final rule in a future **Federal Register** document. The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Considerations for Significant New Use Determinations

When the Agency issues an order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the TSCA Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

B. Procedures for Significant New Uses Claimed as CBI

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential.

Under the procedures in 40 CFR part 721.11 a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will identify any confidential significant new use designations under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.11 into a single step to identify if a chemical substance is subject to 40 CFR part 721 and if a specific use would be a significant new use under the rule.

In the proposed SNURs, EPA referenced 40 CFR 721.1725(b)(1) each time the agency proposed issuing a SNUR containing a significant new use

designation containing CBI. Since, EPA has modified the *bona fide* procedure in 40 CFR 721.11 of subpart A so that it applies to all SNURs containing any CBI, including the significant new use (87 FR 39764, July 5, 2022 (FRL–5605–02–OCSPP)). EPA has revised the regulatory text in the final rule and removed the reference to 40 CFR 721.1725(b)(1) each time the agency issued a final SNUR containing a significant new use designation containing CBI.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from two identifying entities on the proposed rules. The Agency's responses are presented in the Response to Public Comments document that is available in the public docket for this rulemaking. EPA updated the chemical IDs in the SNURs for P–19–98, P–20–58, and P–21–63 as described in the response to comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNURs, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as confidential business information (CBI)).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of these rules.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

These final rules include PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The final SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs and as further discussed in Unit IV. of the proposed rules, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. Based on such findings, TSCA Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants to

- Receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- Have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use; and
- Be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for all the chemical substances that are the subject of this rule, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which will be designated as significant new uses. The identities of many of the chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated the publication dates of the proposed rules (see Unit II.) as the cutoff dates for determining whether the new uses are ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of the abovementioned dates, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to them or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed in this document. Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established production volume and time limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance associated with the designated significant new uses. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket listed in Unit II.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The information collection requirements associated with SNURs have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This rule does not impose any burden requiring additional OMB approval.

The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB

control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was 10 in Federal fiscal year (FY) FY2016, 14 in FY2017, 16 in FY2018, five in FY2019, seven in FY2020, and 13 in FY2021, and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission she from $19,020 to $3,330. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $11,164 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

E. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

F. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

G. Executive Order 13175: Consultation and Coordination With Indian Tribe Governments

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 23, 2023.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11687 through 721.11715 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11687	2070–0012
721.11688	2070–0012
721.11689	2070–0012
721.11690	2070–0012
721.11691	2070–0012
721.11692	2070–0012
721.11693	2070–0012
721.11694	2070–0012
721.11695	2070–0012
721.11696	2070–0012
721.11697	2070–0012
721.11698	2070–0012
721.11699	2070–0012
721.11700	2070–0012
721.11701	2070–0012
721.11702	2070–0012
721.11703	2070–0012
721.11704	2070–0012
721.11705	2070–0012
721.11706	2070–0012
721.11707	2070–0012
721.11708	2070–0012
721.11709	2070–0012
721.11710	2070–0012
721.11711	2070–0012
721.11712	2070–0012
721.11713	2070–0012
721.11714	2070–0012
721.11715	2070–0012
* * * * *	

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PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add §§ 721.11687 through 721.11715 in numerical order to subpart E to read as follows:

Sec.

* * * * *

721.11687 Fatty acids, tall-oil polymers with aminoalkyl, dialkyl alkane diamine, polyalkylene polyamine alkanepolyamine fraction, and tris-[(alkylamino) alkyl] phenol (generic).

721.11688 Isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked (generic).

721.11689 1,4-Cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.

721.11690 Carbomonocylic-oxazolidine (generic).

721.11691 Propoxylated, ethoxylated alkoxyalkyl ether (generic).

721.11692 Phosphoric acid, polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol and 1,2-ethanediol.

721.11693 2-Propenoic acid, 2-(hydrogenated animal-based nitrogen-substituted)ethyl ester (generic).

721.11694 2-Propenoic acid, nitrogen-substituted alkyl, N–C16–18-acyl derivs. (generic).

721.11695 Modified graphene (generic).

721.11696 Maltodextrin, polymer with 2-propenoic acid and N,N,N-trimethyl–2–[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethanaminium chloride (1:1), sodium salt, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated.

721.11697 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–112)

721.11698 Ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–113)

721.11699 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–114)

721.11700 Ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–115)

721.11701 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–116)

721.11702 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–117)

721.11703 Silsesquioxanes, alkyl, alkoxy- and hydroxy- terminated (generic).

721.11704 1,3-Benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 1,6-hexanediol and 1,3-isobenzofurandione, N-[[1,3,3-trimethyl-5-[[[2-[(1-oxo-2- propen-1-yl) oxy]ethoxy]carbonyl]amino]cyclohexyl] methyl]carbamate N-[3,3,5-trimethyl-5-[[[[2-[(1-oxo-2-propen-1-yl)oxy]ethoxy] carbonyl]amino]methyl]cyclohexyl] carbamate.

721.11705 Methyl phenylethyl cyclopropanemethanol (generic).

721.11706 [(Substituted-carbomonocyclic)amino] oxoalkenoic acid, inorganic salt (generic).

721.11707 Sulfonium, triphenyl-, heterocyclic compound-carboxylate (1:1) (generic).

721.11708 Sulfonium, carbocyclic-, salt with 1-(alkyl) 2-[4-[polyhydro-2-carbomonocyclic-5-(polyfluoro-2-sulfoalkyl)-4,7-methano-1,3-benzodioxol-2-yl]carbomonocyclic oxy]acetate (1:1) (generic).

721.11709 Sulfonium, triphenyl-, polyfluoro-polyhydrospiro[9H-carbopolycyclic-9,2′-[4,7]methano[1,3] benzodioxole]-5′-alkenesulfonic acid (1:1) (generic).

721.11710 Heteropolycyclic, trihaloalkyl carbomonocycle-, hydroxy carbomonocyclic salt (generic).

721.11711 Sulfonium, tricarbocyclic-, 2-heteroatom-substituted-4-(alkyl)carbomonocyclic carboxylate (1:1) (generic).

721.11712 2-Propenoic acid, 2-methyl-, aminoalkyl ester, polymer with hydroxyalkyl alkenoate and octadecyl alkenoate, acetate (salts) (generic).

721.11713 Pyrazole-polycarboxylic acid, polyhaloaryl-polyhydro-alkyl-polyalkyl ester (generic).

721.11714 Alkenoic acid, reaction products with alkylamine-alkanediyl diacrylate polymer and [oxybis(alkylene)]bis[alkyl-alkanediol] (generic).

721.11715 Nonane, branched.

* * * * *

§ 721.11687 Fatty acids, tall-oil polymers with aminoalkyl, dialkyl alkane diamine, polyalkylene polyamine alkanepolyamine fraction, and tris-[(alkylamino)alkyl] phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, tall-oil polymers with aminoalkyl, dialkyl alkane diamine, polyalkylene polyamine alkanepolyamine fraction, and tris-[(alkylamino) alkyl] phenol (PMN P–18–143) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11688 Isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked (PMN P–18–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization; respiratory sensitization; germ cell mutagenicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11689 1,4-Cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester (PMN P–18–273; CAS No. 84731–70–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1) and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11690 Carbomonocylic-oxazolidine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbomonocylic-oxazolidine (PMN P–18–290) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5), (a)(6)(v) and (vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: eye irritation; specific target organ toxicity. For

purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=285.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11691 Propoxylated, ethoxylated alkoxyalkyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as propoxylated, ethoxylated alkoxyalkyl ether (PMN P–19–73) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; serious eye damage; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to process the substance for use in a consumer product where the concentration of the substance is 1% or greater in the consumer product formulation.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=24.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11692 Phosphoric acid, polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol and 1,2-ethanediol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphoric acid, polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol and 1,2-ethanediol (PMN P–19–98; CAS No. 2248116–55–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(b), the concentration is set at 1.0%. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1) and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin corrosion; severe eye damage; reproductive toxicity; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance other than as a flame retardant additive for intumescent coatings.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=500.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11693 2-Propenoic acid, 2-(hydrogenated animal-based nitrogen-substituted)ethyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, 2-(hydrogenated animal-based nitrogen-substituted)ethyl ester (PMN P–19–122) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for

Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin corrosion; serious eye damage; skin sensitization; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance in consumer applications.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11694 2-Propenoic acid, nitrogen-substituted alkyl, N–C16–18-acyl derivs. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, nitrogen-substituted alkyl, N–C16–18-acyl derivs. (PMN P–20–83) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin corrosion, serious eye damage, skin sensitization, reproductive toxicity, and specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance in consumer applications.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11695 Modified graphene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified graphene (PMN P–20–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured), embedded into a thermoset polymer resin as an intermediate step before curing, or embedded into a permanent solid polymer form that is not intended to undergo further processing, except mechanical processing or physical blending.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. Where workers are reasonably expected to be exposed by inhalation to dust from the substance, dust controls shall be implemented that demonstrate an exposure reduction of at least 90%. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). It is a significant new use to use the substance in an application method that results in inhalation exposure to workers.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (2), (b)(1) and (2), and (c)(1) and (2). It is a significant new use to release the substance directly to air.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11696 Maltodextrin, polymer with 2-propenoic acid and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethanaminium chloride (1:1), sodium salt, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as maltodextrin, polymer with 2-propenoic acid and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethanaminium chloride (1:1), sodium salt, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated (PMN P–20–58; CAS No. 1646857–41–1) is subject to

reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: specific target organ toxicity. For the purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=102.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11697 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–112).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (PMN P–20–112) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), and (g)(2) and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11698 Ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl] oxirane (generic) (P–20–113).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl] oxirane (PMN P–20–113) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes

of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), and (g)(2) and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11699 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–114).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (PMN P–20–114) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), (g)(2) and (g)(5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11700 Ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl] oxirane (generic) (P–20–115).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with substituted tricarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl] oxirane (PMN P–20–115) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), and (g)(2) and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11701 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–116).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (PMN P–20–116) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include. For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), and (g)(2) and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements:

arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11702 Ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (generic) (P–20–117).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ashes (residues), reactions products with dicarboxylic acid, silicic acid (H4SiO4) tetra-Et ester and 2-[[3-(trialkoxysilyl)alkoxy]methyl]oxirane (PMN P–20–117) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets). For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEL approach are approved by EPA will be required to follow NCEL provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (ix), (g)(2) and (g)(5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(2), avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m^3; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA Order for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11703 Silsesquioxanes, alkyl, alkoxy- and hydroxy- terminated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as silsesquioxanes, alkyl, alkoxy- and hydroxy- terminated (PMN P–20–173) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(b), the concentration is set at 1.0%. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; serious eye damage; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may cause: aquatic toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11704 1,3-Benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 1,6-hexanediol and 1,3-isobenzofurandione, N-[[1,3,3-trimethyl-5-[[[2-[(1-oxo-2- propen-1-yl)oxy]ethoxy]carbonyl]amino]cyclohexyl]methyl]carbamate N-[3,3,5-trimethyl-5-[[[[2-[(1-oxo-2-propen-1-yl)oxy]ethoxy]carbonyl]amino]methyl]cyclohexyl]carbamate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 1,6-hexanediol and 1,3-isobenzofurandione, N-[[1,3,3-trimethyl-5-[[[2-[(1-oxo-2-propen-1-yl)oxy]ethoxy]carbonyl]amino]cyclohexyl]methyl]carbamate N-[3,3,5-trimethyl-5-[[[[2-[(1-oxo-2-propen-1-yl)oxy]ethoxy]carbonyl]amino]methyl]cyclohexyl]carbamate (PMN P–21–10; CAS No. 2460376–09–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation, eye irritation, skin sensitization, and respiratory sensitization. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11705 Methyl phenylethyl cyclopropanemethanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methyl phenylethyl cyclopropanemethanol (PMN P–21–13) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5), (a)(6)(v) and (vi), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: eye irritation; skin sensitization. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance in consumer products unless the concentration of the substance is less than 1%.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11706 [(Substituted-carbomonocyclic)amino] oxoalkenoic acid, inorganic salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as [(substituted-carbomonocyclic)amino] oxoalkenoic acid, inorganic salt (PMN P–21–17) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant

new use to use the substance other than as an additive to improve physical properties in rubber products.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11707 Sulfonium, triphenyl-, heterocyclic compound-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, triphenyl-, heterocyclic compound-carboxylate (1:1) (PMN P–21–18) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11708 Sulfonium, carbocyclic-, salt with 1-(alkyl) 2-[4-[polyhydro-2-carbomonocyclic-5-(polyfluoro-2-sulfoalkyl)-4,7-methano-1,3-benzodioxol-2-yl]carbomonocyclic oxy]acetate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, carbocyclic-, salt with 1-(alkyl) 2-[4-[polyhydro-2-carbomonocyclic-5-(polyfluoro-2-sulfoalkyl)-4,7-methano-1,3-benzodioxol-2-yl]carbomonocyclic oxy]acetate (1:1) (PMN P–21–23) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11709 Sulfonium, triphenyl-, polyfluoro-polyhydrospiro[9H-carbopolycyclic-9,2′-[4,7]methano[1,3]benzodioxole]-5′-alkenesulfonic acid (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, triphenyl-, polyfluoro-polyhydrospiro[9H-carbopolycyclic-9,2′-[4,7]methano[1,3]benzodioxole]-5′-alkenesulfonic acid (1:1) (PMN P–21–64) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the

operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11710 Heteropolycyclic, trihaloalkyl carbomonocycle-, hydroxy carbomonocyclic salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteropolycyclic, trihaloalkyl carbomonocycle-, hydroxy carbomonocyclic salt (PMN P–21–27) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11711 Sulfonium, tricarbocyclic-, 2-heteroatom-substituted-4-(alkyl)carbomonocyclic carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, tricarbocyclic-, 2-heteroatom-substituted-4-(alkyl)carbomonocyclic carboxylate (1:1) (PMN P–21–42) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11712 2-Propenoic acid, 2-methyl-, aminoalkyl ester, polymer with hydroxyalkyl alkenoate and octadecyl alkenoate, acetate (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, aminoalkyl ester, polymer with hydroxyalkyl alkenoate and octadecyl alkenoate, acetate (salts) (PMN P–21–54) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into an article as defined at § 720.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; and specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture or process the substance in any manner that results in inhalation exposure. It is a significant new use to use the substance in an application method that results in inhalation exposure. It is a significant new use to use the substance in a product that is applied by a consumer.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=52. Before totaling the releases of the substance to water from all operations at a site as described in 40 CFR 721.91(a)(5), you may subtract up to 90 percent for any releases that will be treated using primary and secondary wastewater treatment as defined in 40 CFR part 133.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11713 Pyrazole-polycarboxylic acid, polyhaloaryl-polyhydro-alkyl-polyalkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as pyrazole-polycarboxylic acid, polyhaloaryl-polyhydro-alkyl-polyalkyl ester (PMN P–21–63) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; acute toxicity; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11714 Alkenoic acid, reaction products with alkylamine-alkanediyl diacrylate polymer and [oxybis(alkylene)]bis[alkyl-alkanediol] (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, reaction products with alkylamine-alkanediyl diacrylate polymer and [oxybis(alkylene)]bis[alkyl-alkanediol] (PMN P–21–65) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (6) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include: particulate (including solids or liquid droplets).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) and (5). For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance in a spray application.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11715 Nonane, branched.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as nonane, branched (PMN P–21–125; CAS No. 85408–10–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5), (a)(6)(v) and (vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.72 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30 Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), and (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation; eye irritation; reproductive toxicity; specific target organ toxicity; aspiration hazard. For purposes of § 721.72(g)(3), this substance may be: toxic to aquatic life. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2023–04157 Filed 3–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0837; FRL–10294–02–09]

Air Plan Approval; California; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from architectural coating operations. We are approving a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). Approval of the local rule as part of the California SIP makes it federally enforceable.

DATES: This rule is effective on April 5, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2022–0837. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3204 or by email at *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On November 15, 2022 (87 FR 68410), the EPA proposed to approve the following revised rule into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Revised	Submitted
VCAPCD	74.2	Architectural Coatings	11/10/2020	7/26/2021

We proposed to approve this revised rule because we determined that it complies with the relevant CAA requirements. More specifically, we evaluated the revised rule and determined that it remains enforceable, that it implements reasonably available control measure (RACM)-level controls, and that it would not interfere with any applicable requirement concerning attainment or reasonable further progress (RFP) or any other requirement of the CAA. Our November 15, 2022 proposed rule contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

Pursuant to section 110(k)(3) of the CAA, and for the reasons provided in our November 15, 2022 proposed rule and summarized above, the EPA is fully approving the amended VCAPCD architectural coatings rule into the California SIP. Upon the effective date of this final rule, the November 10, 2020 version of VCAPCD Rule 74.2 will replace the previously approved version of the rule in the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of VCAPCD Rule 74.2, ''Architectural Coatings,'' revised on November 10, 2020, which regulates VOC emissions from architectural coating operations. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

Lastly, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 23, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(381)(i)(C)(*3*) and (c)(569)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(381) * * *

(i) * * *

(C) * * *

(*3*) Previously approved on July 6, 2011, in paragraph (c)(381)(i)(C)(*2*) of this section and now deleted with replacement in paragraph

(c)(569)(i)(A)(*3*) of this section, Rule 74.2, ''Architectural Coatings,'' amended on January 12, 2010.

* * * * *

(569) * * *

(i) * * *

(A) * * *

(*3*) Rule 74.2, ''Architectural Coatings,'' revised on November 10, 2020.

* * * * *

[FR Doc. 2023–04392 Filed 3–3–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–420; RM–11937; DA 23–146; FR ID 129129]

Television Broadcasting Services Yuma, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 12, 2022, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner or Gray), which holds a construction permit for channel 11 at Yuma, Arizona as the winning bidder in Auction 112. Gray requests the substitution of channel 27 for channel 11 at Yuma in the Table of TV Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 27 for channel 11 at Yuma.

DATES: Effective March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 76434 on December 13, 2022. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 27. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 27 for channel 11 at Yuma, Arizona since grant of the proposed channel substitution will provide a robust signal for over-the-air reception while avoiding the well-documented indoor reception issues with digital VHF stations which the Commission has recognized. The proposal complies with all relevant technical requirements for amendment of the Table of TV Allotments, including the interference protection requirements of section 73.616 of the Commission's rules, and the petition further demonstrates that the proposed channel 27 facility will provide full principal community coverage to Yuma, Arizona. Additionally, no change in transmitting location is proposed from that specified in the current construction permit.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–420; RM–11937; DA 23–146, adopted February 23, 2023, and released February 24, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under Arizona, by revising the entry for Yuma to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
ARIZONA	
* * * * *	
Yuma	13, 27
* * * * *	

[FR Doc. 2023–04387 Filed 3–3–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 221130–0254]

RIN 0660–AA38

Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is making certain changes to its regulations relating to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). NTIA has the authority, delegated by the president, to assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States. NTIA's manual reflects this authority and provides for the coordination of Executive branch agencies' spectrum management and coordination. Specifically, NTIA is releasing a new edition of the NTIA Manual, with which Federal agencies must comply when requesting use of radio frequency spectrum.

DATES: *Effective:* March 6, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 6, 2023.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of

Spectrum Management, 1401 Constitution Avenue NW, Room 1087, Washington, DC 20230 and online at *https://www.ntia.gov/page/2011/manual-regulations-and-procedures-federal-radio-frequency-management-redbook.*

FOR FURTHER INFORMATION CONTACT: Alan Frable, Office of Spectrum Management, at (202) 482–1670 or *afrable@ntia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Incorporation by Reference

NTIA authorizes the U.S. Government's use of radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable Federal agencies on the use of the radio frequency spectrum for radio transmissions for telecommunications or for other purposes. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal Government agencies are required to follow these policies and procedures in their use of spectrum. Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments. See 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR, 1978 Comp., p. 158. This rule updates § 300.1 of title 47 of the Code of Federal Regulations to specify the edition of the NTIA Manual with which Federal agencies must comply when requesting frequency assignments. This rule amends the section by incorporating by reference the 2022 edition of the NTIA Manual. Upon the effective date of this rule, Federal agencies must comply with the requirements set forth in the 2022 edition of the NTIA Manual. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8, and online at *https://www.ntia.gov/page/2011/manual-regulations-and-procedures-federal-radio-frequency-management-redbook.* A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW, Room 1087, Washington, DC 20230, by calling Alan Frable on (202) 482–1670.

II. Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget (OMB) Control Number.

III. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

IV. Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action merely amends the regulations to include the date of the most current edition of the NTIA Manual. These changes do not impact the rights or obligations to the public. The NTIA Manual applies only to Federal agencies. Because these changes impact only Federal agencies, and has no other substantive impact, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the same reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

V. Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in Executive Order 13132.

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Revise § 300.1(b) to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The material listed in this paragraph (b) is incorporated by reference into this section with approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at National Telecommunications and Information Administration (NTIA) and the National Archives and Records Administration (NARA). Contact NTIA at: National Telecommunications and Information Administration, Office of Spectrum Management, 1401 Constitution Avenue NW, Room 1087, Washington, DC 20230, telephone: (202) 482–1670. For information on the availability of this material, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material is available from: Commerce Department, National Telecommunications and Information Administration, Office of Spectrum Management, 1401 Constitution Avenue NW, Washington, DC 20230, *www.ntia.gov/page/2022/manual-regulations-and-procedures-federal-radio-frequency-management-redbook;* and Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, *https://bookstore.gpo.gov/* (reference Catalog Number 903–008–00000–8).

(1) Manual of Regulations and Procedures for Federal Radio Frequency Management, January 2022 Revisions to the January 2021 Edition, approved November 8, 2022.

(2) [Reserved]

Stephanie Weiner,

Chief Counsel (Acting), Office of Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023–04358 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–60–P

Proposed Rules

Federal Register
Vol. 88, No. 43
Monday, March 6, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2018–0291]

RIN 3150–AK23

American Society of Mechanical Engineers Code Cases and Update Frequency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference proposed revisions of three regulatory guides, which would approve new, revised, and reaffirmed code cases published by the American Society of Mechanical Engineers. This proposed action would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases listed in these draft regulatory guides as voluntary alternatives to engineering standards for the construction, inservice inspection, and inservice testing of nuclear power plant components. The NRC is requesting comments on this proposed rule and on the draft versions of the three regulatory guides proposed to be incorporated by reference. The NRC also is making available a related draft regulatory guide that lists code cases that the NRC has not approved for use. This draft regulatory guide will not be incorporated by reference into the NRC's regulations. In addition, this rulemaking proposes to extend the time periods required for licensees to update their codes of record.

DATES: Submit comments by May 5, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0291. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Andrukat, Office of Nuclear Material and Safeguards, telephone: 301–415–3561, email: *Dennis.Andrukat@nrc.gov* and Bruce Lin, Office of Nuclear Regulatory Research, telephone: 301–415–2446, email: *Bruce.Lin@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

This regulatory action proposes to incorporate by reference into the NRC's regulations the latest revisions of three regulatory guides (RGs) (currently in draft form for comment). The three draft RGs identify new, revised, and reaffirmed code cases published by the American Society of Mechanical Engineers (ASME) that the NRC has determined are acceptable for use as voluntary alternatives to compliance with certain provisions of the ASME *Boiler and Pressure Vessel Code* (BPV Code) and the ASME *Operation and Maintenance* (OM) *of Nuclear Power Plants, Division 1, OM Code: Section IST* (OM Code) currently incorporated by reference into the NRC's regulations.

This regulatory action also proposes to revise the current NRC requirement for nuclear power plant licensees to update the codes of record for their inservice testing (IST) and inservice inspection (ISI) programs every 10 years, for licensees that are implementing the 2020 Edition, or later editions, of the ASME OM Code and the 2019 Edition, or later editions, of the ASME BPV Code, Section XI, as incorporated by reference in § 50.55a, ''Codes and standards,'' of title 10 of the *Code of Federal Regulations* (10 CFR). This proposed revision to the NRC's regulations follows Commission direction in staff requirements memorandum (SRM) SRM–SECY–21–0029 (dated November 8, 2021) in response to SECY–21–0029, ''Rulemaking Plan on Revision of Inservice Testing and Inservice Inspection Program Update Frequencies Required in 10 CFR 50.55a,'' dated March 15, 2021. This rule proposes additional changes to § 50.55a to promote clarity and consistency, including adding definitions of important terms and revising the reference to the 10-year service period in 10 CFR part 50, appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' This rulemaking does not address all aspects of SRM–SECY–21–0029. Specifically, the NRC staff will consider options for streamlining ASME Code Case rulemakings in the future.

B. Major Provisions

The NRC proposes to incorporate by reference into the NRC's regulations the following regulatory guides: RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 40 (Draft Regulatory Guide (DG)–1405); RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 21 (DG–1406); and RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 5 (DG–1407). This proposed action would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design

certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in these revised RGs as voluntary alternatives to ASME engineering standards for the construction, inservice inspections, and inservice testing of nuclear power plant components. The NRC also notes the availability of a proposed version of RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 8 (DG–1408). This document lists code cases that the NRC has not approved for generic use and would not be incorporated by reference into the NRC's regulations.

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that this proposed rule would result in net savings to the industry and the NRC. As shown in Table 1, the estimated total net benefit relative to the regulatory baseline and the quantitative benefits would outweigh the costs by a range from approximately $34.3 million (7-percent net present value) to $40.5 million (3-percent net present value).

TABLE 1—COST BENEFIT SUMMARY

Attribute	Total averted costs (costs)		
	Undiscounted	7% Net present value	3% Net present value
Industry Implementation	$0	$0	$0
Industry Operation	36,710,000	29,890,000	35,110,000
Total Industry Costs	*36,710,000*	*29,890,000*	*35,110,000*
NRC Implementation	(510,000)	(430,000)	(480,000)
NRC Operation	6,380,000	4,860,000	5,860,000
Total NRC Costs	*5,870,000*	*4,430,000*	*5,380,000*
Net	42,580,000	34,320,000	40,490,000

The draft regulatory analysis also considered the following qualitative considerations: (1) flexibility and decreased uncertainty for licensees when making modifications or preparing to perform inservice inspection or inservice testing; (while continuing to ensure safety; (2) consistency with the provisions of the National Technology Transfer and Advancement Act of 1995, which encourages Federal regulatory agencies to consider adopting voluntary consensus standards as an alternative to *de novo* agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The draft regulatory analysis concludes that this proposed rule should be adopted because it is justified when integrating the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the draft regulatory analysis as indicated in Section XVI, Availability of Documents, of this document.

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0291 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0291.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include

Docket ID NRC–2018–0291 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

A. Proposed Incorporation by Reference of Three Regulatory Guides

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection of nuclear power plant components, and the ASME OM Code,[1] which contains requirements for preservice and inservice testing of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops code cases that provide voluntary alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves the ASME BPV and OM Codes in § 50.55a, ''Codes and standards,'' through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into and mandated by § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted previously, the ASME Code Cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference the NRC's RGs listing approved ASME Code Cases that may be used as voluntary alternatives to the BPV and OM Codes.[2]

This proposed rule is the latest in a series of rules that incorporate by reference new versions of several RGs that identify new, revised, and reaffirmed [3] ASME Code Cases that the NRC unconditionally or conditionally approves for use. In developing these RGs, the NRC reviews the ASME BPV and OM Code Cases, determines the acceptability of each code case, and publishes its findings in the RGs. The RGs are revised periodically as new code cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into § 50.55a. The NRC published a final rule dated March 3, 2022 (87 FR 11934), that incorporated by reference into § 50.55a the most recent versions of the RGs, which are RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 39; RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 20; and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 4.

B. Proposed Revision to Code of Record Update Requirements

The NRC staff provided SECY–21–0029 to the Commission with a proposed rulemaking plan for revising the IST and ISI code of record update requirements in § 50.55a. The Commission issued SRM–SECY–21–0029, directing the staff to proceed with the proposed rulemaking plan. In SECY–22–0075, ''Staff Requirements-SECY–21–0029 Inservice Testing and Inservice Inspection Program Rulemakings Update,'' dated August 10, 2022, the staff described deviations it was taking from the original plan in response to new information and changed circumstances that affected the implementation of SRM–SECY–21–0029. These changes included combining the two proposed rulemakings (the ASME code case and the IST and ISI code of record update requirements). These changes also included making conforming and clarifying changes to address issues encountered during the development of this proposed rule. One such change was the addition of a definition section to the proposed rule (§ 50.55a(y)) where ''code of record interval'' (the period of time between the code of record updates required by § 50.55a(f)(4) and (g)(4) for the IST and ISI programs, respectively) was differentiated from both the ISI and IST intervals (the ASME interval described by the licensee's code of record).

In this proposed rule, along with incorporating by reference three regulatory guides on ASME Code Cases, the NRC is providing a proposed revision to § 50.55a for public comment in accordance with the Commission's direction in SRM–SECY–21–0029. This proposed rule would specify that licensees are required to update their IST and ISI codes of record every two consecutive IST intervals or ISI intervals, as defined in the proposed rule, provided the licensee implements the 2020 Edition, or later edition, of the ASME OM Code and the 2019 Edition, or later edition or addenda, of ASME BPV Code, Section XI, as incorporated by reference in § 50.55a, for their IST and ISI programs, respectively. With this revised requirement to update the code of record, the NRC does not intend that the code of record interval for an IST or ISI program would exceed 25 years, even if ASME extends the IST interval or the ISI interval beyond 12 years in the ASME OM Code or the ASME BPV Code, respectively. The proposed 25-year maximum code of record interval would allow the same code of record to be used for two consecutive ISI or IST intervals, each up to 12 years, plus the one-time 1-year extension for IST and ISI programs as specified in the ASME OM Code and ASME BPV Code, respectively. If future editions of the ASME OM Code or ASME BPV Code or future code cases extend the IST interval or ISI interval, respectively, beyond 12 years, the NRC would need to maintain the proposed 25-year maximum code of record interval.

In draft Revision 5 to RG 1.192, the NRC is proposing to conditionally accept ASME OM Code Case OMN–31, ''Alternative to Allow Extension of ISTA–3120 Inservice Examination and Test Intervals From 10 Years to 12 Years,'' as a voluntary alternative to the 10-year interval specified in the ASME OM Code for applicants and licensees implementing the 2020 Edition of the ASME OM Code or later editions as incorporated by reference in § 50.55a. In

[1] The editions and addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants have had different titles from its initial issuance and are referred to as the ''OM Code'' collectively in this rule.

[2] See **Federal Register** final rule, ''Incorporation by Reference of ASME BPV and OM Code Cases'' (68 FR 40469; July 8, 2003).

[3] Code cases are categorized by the ASME as one of three types: new, revised, or reaffirmed. A new code case provides for a new alternative to a specific ASME Code provision or addresses a new need. The ASME defines a revised code case to be a revision (modification) to an existing code case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the RGs that have been incorporated by reference into § 50.55a. The ASME defines ''reaffirmed'' as an OM Code Case that does not have any change to technical content but includes editorial changes.

draft Revision 21 to RG 1.147, the NRC is proposing to conditionally accept ASME Code Case N–921, ''Alternative 12-yr Inspection Interval Duration, Section XI, Division 1,'' as a voluntary alternative to the 10-year interval specified in Section XI, IWA–2400 of the ASME BPV Code for applicants and licensees implementing the 2019 Edition of the ASME BPV Code or later editions as incorporated by reference in § 50.55a.

III. Discussion

A. Proposed Incorporation by Reference of Three Regulatory Guides

This proposed rule would incorporate by reference the latest revisions of the NRC's RGs that list the ASME BPV and OM Code Cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions (''conditionally acceptable''). RG 1.84, Revision 40 (DG–1405) would supersede the incorporation by reference of Revision 39; RG 1.147, Revision 21 (DG–1406) would supersede the incorporation by reference of Revision 20; and RG 1.192, Revision 5 (DG–1407) would supersede the incorporation by reference of Revision 4.

The ASME Code Cases that are the subject of this proposed rule are the new and revised Section III and Section XI Code Cases as listed in Supplements 2 through 7 to the 2019 Edition of the ASME BPV Code, Supplements 0 through 2 and selected Code Cases from Supplement 3 to the 2021 Edition of the ASME BPV Code, and the OM Code Cases listed in the 2022 Edition of the ASME OM Code. By letter dated December 22, 2021, ASME requested that the NRC consider including Code Cases N–663–1, N–885–1, and N–921 in this proposed rulemaking. In response, the NRC included these three code cases within the scope of this proposed rule. The NRC is also proposing to include OMN–31 within the scope of this proposed rule to provide consistency between the ISI and IST programs.

The ASME publishes code cases that provide alternatives to existing code requirements that the ASME developed and approved. This proposed rule would incorporate by reference the most recent revisions of RGs 1.84, 1.147, and 1.192, which allow nuclear power plant licensees, and applicants for combined licenses, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, to use the code cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, inservice inspections, and inservice testing of nuclear power plant components. The ASME makes the issued OM Code Cases available on the OM Code website and provides an index listing the issued OM Code Cases and their applicability in each ASME OM Code edition. In contrast, the ASME publishes BPV Code Cases in a separate document and at a different time than the ASME BPV Code Editions. This proposed rule identifies the BPV Code Cases by the edition of the ASME BPV Code under which they were published by the ASME and the OM Code Cases by the most recent edition of the ASME OM Code to which they apply.

The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this proposed rule. Specifically, the use of the Code Cases listed in the latest versions of RGs 1.84, 1.147, and 1.192 are acceptable with the specified conditions when implementing the editions and addenda of the ASME BPV and OM Codes incorporated by reference in § 50.55a.

The approval of a code case in these RGs constitutes acceptance of its technical position for applications that are not precluded by other requirements. The applicant or licensee is responsible for ensuring that use of the code case does not conflict with regulatory requirements or licensee commitments. The code cases listed in the RGs are acceptable for use within the limits specified in the code cases. If the RG states an NRC condition on the use of a code case, then the NRC condition supplements and does not supersede any condition(s) specified in the code case, unless otherwise stated in the NRC condition.

The ASME Code Cases may be revised for many reasons (*e.g.,* to incorporate operational examination and testing experience and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Therefore, when an applicant or a licensee initially implements a code case, § 50.55a requires that the applicant or the licensee implement the most recent version of that code case, as listed in the RGs incorporated by reference. Code cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies to new construction (*e.g.,* the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Section III may also be used for repair and replacement activities under the provisions of Section XI of the ASME BPV Code. Whether used for construction or later repair or replacement, when a code case is first implemented by a licensee, the applicant implements the latest edition incorporated by reference into § 50.55a. Thereafter, the applicant or licensee may continue to apply the previous version of the code case or may apply the later version of the code case, including any NRC-specified conditions placed on its use, as an update to its code of record for the component.

Licensees that were using a code case prior to the effective date of its revision may continue to use the previous version until the next update to the code of record for the ISI or IST program, as applicable. This relieves licensees of the burden of having to update their ISI or IST program each time a code case is revised by the ASME and approved for use by the NRC. Code cases apply to specific editions and addenda, and code cases may be revised if they are no longer accurate or adequate, so licensees choosing to continue using a code case into a later code of record interval (*e.g.,* after updating the edition and addenda) for the ISI or IST program must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul code cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. A code case may be revised, for example, to incorporate user experience. The older or superseded version of the code case cannot be applied by the licensee or applicant for a first use of that code case. If an applicant or a licensee applied a code case before it was listed as superseded or annulled, the applicant or the licensee may continue to use the code case until the applicant or the licensee updates its construction code of record (in the case of an applicant, updates its application) or until the licensee's code of record interval for the ISI or IST program expires, after which the continued use of the code case is prohibited unless NRC authorization is given under § 50.55a(z). If a code case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination

method, or testing method is inadequate, the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded code case. Applicants and licensees should not begin to implement such superseded code cases in advance of the rulemaking. This proposed rulemaking includes minor editorial changes to § 50.55a(a) to align with the Office of the Federal Register's guidance on the incorporation by reference.

B. Code Cases Proposed To Be Approved for Unconditional Use

The code cases discussed in Table I are new, revised, or reaffirmed code cases in which the NRC is not proposing any conditions. The table identifies the draft regulatory guide listing the applicable code case that the NRC proposes to approve for use.

TABLE I—ACCEPTABLE CODE CASES

Boiler and Pressure Vessel Code Section III
(addressed in DG–1405, Table 1)

Code case No.	Published with supplement	Title
N–351–1	3 (2021 Edition)	Use of Standard Subsize Charpy V-Notch Impact Specimens, Section III, Division 1; Section III, Division 2; Section III, Division 3.
N–893	4 (2019 Edition)	Use of Alloy Steel Bar and Mechanical Tubing in Class 2 and 3 Patented Mechanical Joints and Fittings, Section III, Division 1.
N–900	3 (2019 Edition)	Alternative Rules for Level D Service Limits of Class 1, 2, and 3 Piping Systems, Section III, Division 1.
N–901	4 (2019 Edition)	Use of ASME SA–494 Grade M35–1 for Line Valve Bodies and Bonnets, and Bodies, Bonnets, and Yokes of Pressure Relief Valves for Class 2 and 3 Construction, Section III, Division 1.
N–902	5 (2019 Edition)	Thickness and Gradient Factors for Piping Fatigue Analyses, Section III, Division 1.
N–904	6 (2019 Edition)	Alternative Rules for Simplified Elastic–Plastic Analysis, Section III, Division 1.
N–905	6 (2019 Edition)	Alternate Design Fatigue Curves to Those Given in For Section III Appendices, Mandatory Appendix I, Figures I–9.1 and I–9.1M, Section III, Division 1.
N–908	7 (2019 Edition)	Use of Ferritic/Austenitic Wrought WPS32750/CRS32750 Fittings of Seamless or Welded Construction Conforming to SA–815, Class 3, Section III, Division 1.
N–910	7 (2019 Edition)	Use of 25Cr-7Ni-4Mo-N (Alloy UNS S32750 Austenitic/Ferritic Duplex Stainless Steel) Forgings, Plate, and Welded and Seamless Pipe and Tubing Conforming to SA–182, SA–240, SA–789, or SA–790, Section III, Division 1.
N–919	2 (2021 Edition)	Alternative Fatigue Evaluation Method to Consider Environmental Effects on Class 1 Components Section III, Division 1.
N–920	2 (2021 Edition)	Alternative Fatigue Design Curves for Ferritic Steels With Ultimate Tensile Strengths (UTS) ≤80 ksi (552 MPa) and Austenitic Steels, Section III, Division 1.

Boiler and Pressure Vessel Code Section XI
(addressed in DG–1406, Table 1)

Code case No.	Published with supplement	Title
N–561–4	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping, Section XI, Division 1.
N–562–4	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N–597–5	0 (2021 Edition)	Evaluation of Pipe Wall Thinning, Section XI, Division 1.
N–638–11	2 (2019 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–661–5	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service Section XI, Division 1.
N–663–1	3 (2021 Edition)	Alternative Requirements for Classes 1 and 2 Surface Examinations, Section XI, Division 1.
N–733–1	6 (2019 Edition)	Mitigation of Flaws in NPS 3 (DN 80) and Smaller Nozzles and Nozzle Partial Penetration Welds in Vessels and Piping by Use of a Mechanical Connection Modification, Section XI, Division 1.
N–780–1	1 (2021 Edition)	Alternative Requirements for Upgrade, Substitution, or Reconfiguration of Examination Equipment When Using Appendix VIII Qualified Ultrasonic Examination Systems, Section XI, Division 1.
N–786–4	0 (2021 Edition)	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N–789–5	1 (2021 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–809–1	0 (2021 Edition)	Reference Fatigue Crack Growth Rate Curves for Austenitic Stainless Steels in Pressurized Reactor Water Environments, Section XI, Division 1.
N–853–1	0 (2021 Edition)	PWR Class 1 Primary Piping Alloy 600 Full Penetration Branch Connection Weld Metal Buildup for Material Susceptible to Primary Water Stress Corrosion Cracking, Section XI, Division 1.
N–860	6 (2019 Edition)	Inspection Requirements and Evaluation Standards for Spent Nuclear Fuel Storage and Transportation Containment Systems, Section XI, Division 1; Section XI, Division 2.
N–865–2	0 (2021 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Atmospheric Storage Tanks, Section XI, Division 1.

TABLE I—ACCEPTABLE CODE CASES—Continued

N–877–1	5 (2019 Edition)	Alternative Characterization Rules for Multiple Subsurface Radially Oriented Planar Flaws, Section XI, Division 1.
N–882–1	0 (2021 Edition)	Alternative Requirements for Attaching Nonstructural Electrical Connections to Class 2 and 3 Components, Section XI, Division 1.
N–885–1	3 (2021 Edition)	Alternative Requirements for Table IWB–2500–1, Examination Category B–N–1, Interior of Reactor Vessel, Category B–N–2, Welded Core Support Structures and Interior Attachments to Reactor Vessels, Category BN–3, Removable Core Support Structures, Section XI, Division 1.
N–888	5 (2019 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature SMAW or Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–896	2 (2019 Edition)	Reference Crack Growth Rate Curves for Stress Corrosion Cracking of Low Alloy Steels in Boiling Water Reactor Environments, Section XI, Division 1.
N–911	0 (2021 Edition)	Purchase, Exchange, or Transfer of Material Between Nuclear Owners, Section XI, Division 1.
N–912	0 (2021 Edition)	Alternative Requirements for Qualification of Material Suppliers and Acceptance of Materials, Section XI, Division 1.
N–913	0 (2021 Edition)	Alternative Examination Requirements for Class 1 Pressure-Retaining Welds in Control Rod Drive Housings, Section XI, Division 1.
N–917	2 (2021 Edition)	Fatigue Crack Growth Rate Curves for Ferritic Steels in Boiling Water Reactor (BWR) Environments, Section XI, Division 1.

Operation and Maintenance Code
(addressed in DG–1407, Table 1)

Code case	Most recent code edition [4]	Title
OMN–28	2022 Edition	Alternative Valve Position Verification Approach to Satisfy ISTC–3700 for Valves Not Susceptible to Stem-Disk Separation.
OMN–29	2022 Edition	Pump Condition Monitoring Program.
OMN–30	2022 Edition	Alternative Valve Position Verification Approach to Satisfy ISTC–3700.

C. Code Cases Approved for Use With Conditions

The NRC has determined that certain code cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those code cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC proposes to impose conditions on the use of these code cases to modify, limit or clarify their requirements. The conditions would specify, for each applicable code case, the additional activities that must be performed, the limits on the activities specified in the code case, and/or the supplemental information needed to provide clarity. These ASME Code Cases, listed in Table II, are included in Table 2 of DG–1405 (RG 1.84), DG–1406 (RG 1.147), and DG–1407 (RG 1.192). This section provides the NRC's evaluation of the code cases and the reasons for the NRC's proposed conditions. Notations indicate the conditions duplicated from previous versions of the RG.

The NRC requests public comment on these code cases and the proposed conditions. It also should be noted that this section only addresses those code cases for which the NRC proposes to impose condition(s), which are listed in the RG for the first time.

TABLE II—CONDITIONALLY ACCEPTABLE CODE CASES

Boiler and Pressure Vessel Code Section III
(addressed in DG–1405, Table 2)

Code case No.	Published with supplement	Title
N–71–21	0 (2021 Edition)	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N–570–3	0 (2021 Edition)	Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1.

Boiler and Pressure Vessel Code Section XI
(addressed in DG–1406, Table 2)

Code case No.	Published with supplement	Title
N–711–2	6 (2019 Edition)	Alternative Examination Coverage Requirements for Examination Category B F, B J, C–F–1, C–F–2, and R–A Piping Welds, Section XI, Division 1.
N–716–3	5 (2019 Edition)	Alternative Classification and Examination Requirements, Section XI, Division 1.
N–754–2	0 (2021 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.

[4] Each code case or ASME Applicability Index List indicates the ASME OM Code editions and addenda to which the code case applies, except where a condition is specified in § 50.55a or RG 1.192 related to technical content or applicability. This table indicates the latest OM Code edition at the time of this rulemaking.

TABLE II—CONDITIONALLY ACCEPTABLE CODE CASES—Continued

N–766–4	0 (2021 Edition)	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N–847–1	0 (2021 Edition)	Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.
N–880–1	0 (2021 Edition)	Alternative to Procurement Requirements of IWA–4143 for Nonstandard Welded Fittings, Section XI, Division 1.
N–899	3 (2019 Edition)	Weld Residual Stress Distributions for Piping and Vessel Nozzle Butt Welds Fabricated With UNS N06082, UNS W86182, UNS N06052, or UNS W86152 Weld Filler Material, Section XI, Division 1.
N–906	7 (2019 Edition)	Flaw Evaluation Procedure for Cast Austenitic Stainless Steel Piping and Adjacent Fittings, Section XI, Division 1.
N–921	3 (2021 Edition)	Alternative 12-yr Inspection Interval Duration, Section XI, Division 1.

Operation and Maintenance Code
(addressed in DG–1407, Table 2)

Code case No.	Most recent OM code edition[5]	Title
OMN–31	2022 Edition	Alternative to Allow Extension of ISTA–3120 Inservice Examination and Test Intervals From 10 Years to 12 Years.

ASME BPV Code, Section III Code Cases (DG–1405/RG 1.84)

Code Case N–71–21 [Supplement 0, 2021 Edition]

Type: Revised
Title: Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1

The proposed conditions on Code Case N–71–21 are the same as the conditions on N–71–20 that were approved by the NRC in Revision 39 of RG 1.84. When the ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 40 of RG 1.84.

Code Case N–570–3 [Supplement 0, 2021 Edition]

Type: Revised
Title: Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1

Code Case N–570–3 would update references made to ANSI/AISC N690–1994 and ANSI/AISC N690–1994 (R2004) Supplement 2 with ANSI/AISC N690–18. A difference between ANSI/AISC N690–18 and ANSI/AISC N690–1994 (R2004) is that ANSI/AISC N690–18 allows the use of the Load and Resistance Factor Design (LRFD) method or the Allowable Strength Design (ASD) method, versus the allowable stress design method or plastic design method contained in the ANSI/AISC N690–1994 (R2004) edition. Code Case N–570–2 explicitly stated in paragraph 3.11 that the plastic design method in Part 2 of ANSI/AISC N690–1994 (R2004) shall not be used. It is the NRC's understanding that the alternative requirements of code case N–570–3 for design are also intended to be limited to the design for strength using the ASD method of ANSI/AISC N690–18, which is similar to the allowable stress design method used in N–570–2; however, the code case does not include such explicit qualifiers regarding the use of ANSI/AISC N690–18. The alternative requirements for design in Code Case N–570–3 would be limited to the design for strength using the ASD method of ANSI/AISC N690–18. To provide clarity, the NRC is proposing a condition: ''This Code Case shall not be used with the Load and Resistance Factor Design method of ANSI/AISC N690–18.''

ASME BPV Code, Section XI Code Cases (DG–1406/RG 1.147)

Code Case N–711–2 [Supplement 6, 2019 Edition]

Type: Revised
Title: Alternative Examination Coverage Requirements for Examination Category B F, B J, C–F–1, C–F–2, and R–A Piping Welds, Section XI, Division 1

The condition on Code Case N–711–2 would be identical to the condition on N–711–1 that was approved by the NRC in Revision 20 of RG 1.147. When the ASME revised N–711, the code case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition would be retained in Revision 21 of RG 1.147.

Code Case N–716–3 [Supplement 5, 2019 Edition]

Type: Revised
Title: Alternative Classification and Examination Requirements, Section XI, Division 1

Code Case N–716 provides rules for alternative classification and examination requirements for piping welds and components. Revision 3 to Code Case N–716 would remove the provision for plants issued an operating license after January 1, 2012, to submit the application of this Code Case for regulatory approval. The NRC is cognizant of the committee's desire to eliminate the provision for newly constructed plants to submit first time applications of N–716 to the NRC. It was the Committee's intention to make this Code Case more generally applicable internationally. However, the NRC is of the opinion that the new designs may introduce additional variables, which in the absence of substantial operating experience with these new plants, may introduce uncertainty on the applicability of this Code Case to the new plants. Hence, the NRC has determined there is a need to review the initial proposals for new plants. The review would confirm the absence of new degradation mechanisms, evaluate with available operating experience, as well as the risk-related information for the new plants prior to the initial application of the Code Case to new plants. Therefore, the NRC is proposing a condition that this Code Case is not approved for use by plants issued an

[5] Each code case or ASME Applicability Index List indicates the ASME OM Code editions and addenda to which the code case applies, except where a condition is specified in § 50.55a or RG 1.192 related to technical content or applicability. This table indicates the latest OM Code edition at the time of this rulemaking. Conditions specified for other OM Code Cases listed in Table 2 of RG 1.192 have not changed in this rulemaking other than updating to the latest OM Code edition.

operating license or combined license after January 1, 2012. However, plants issued an operating license or combined license after January 1, 2012, may submit an alternative to use this Code Case in accordance with § 50.55a(z) for review and approval prior to implementation.

Code Case N–754–2 [Supplement 0, 2021 Edition]

Type: Revised

Title: Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1

The NRC is proposing to revise the conditions on N–754–1 to remove reference to the NRC's safety evaluation for the topical report ''Materials Reliability Program (MRP): Technical Basis for Preemptive Weld Overlays for Alloy 82/182 Butt Welds in PWRs'' (MRP–169) and to clarify the examination requirements.

The first condition deals with the use of this Code Case on a pipe that implements NRC-approved leak-before-break (LBB) methodology. The application of the LBB concept to a pipe is that if a flaw is developed in a pipe with certain favorable material properties, the pipe will most likely leak first before it fails catastrophically. The existing leakage detection system in the nuclear plant will detect the leakage and alert the operator. The operator has sufficient time to shut down the plant safely to perform corrective actions. The NRC has approved LBB for certain Class 1 reactor coolant system piping in pressurized water reactor plants based on the plant-specific and piping-specific LBB analysis, which shows that the probability of the piping rupture is extremely low under conditions consistent with the design basis for the piping as required in General Design Criterion 4 of 10 CFR part 50, appendix A. The LBB methodology and analysis, including specific safety margins, are reviewed and approved via the license amendment process. The LBB implementation is documented in the plant final safety analysis report. When an optimized weld overlay is installed onto pipes that are approved for LBB, the licensee must verify that the safety margins specified in the original LBB analysis are still satisfied.

The second condition states that the preservice and inservice examinations of the overlaid pipe using this Code Case must be performed in accordance with § 50.55a(g)(6)(ii)(F). Paragraph 3(c) of N–754–2 states that—

In lieu of all other Preservice and Inservice inspection requirements, the examination requirements in accordance with N–770–2 (or later in accordance with [Paragraph] 5) shall be met. Alternately, the requirements of [subparagraphs] (1) through (3) below may be used to modify the provisions of N–770–2 (or later in accordance with [Paragraph] 5).

As stated, if the inspection of the overlaid pipe performed in accordance with N–770–2 cannot be met or performed, alternatives of Paragraphs 3(c)(1), 3(c)(2) and 3(c)(3) of N–754–2 could be used. The NRC identified the following issues regarding the statement in Paragraph 3(c):

- Paragraphs 3(c)(2) and 3(c)(3) of N–754–2 are related to the design and analysis, not the inspection of the overlaid pipe. Therefore, it is not clear how these two paragraphs can be used to modify the inspection provisions of N–770–5.
- The inspection provisions of Paragraph 3(c)(1) are allowed to be different from the provisions of Note 14, Preservice Inspection for Optimized Weld Overlays, and Note 18, Inservice Inspection of Optimized Weld Overlays, of Table 1 of N–770. The NRC notes that 10 CFR 50.55a(g)(6)(ii)(F) mandates the use of N–770, as conditioned, for the examination requirements for optimized weld overlays in dissimilar metal butt welds. Therefore, for regulatory clarity regarding preservice and inservice inspection requirements, the proposed condition is provided.
- Section 50.55a(g)(6)(ii)(F) mandates the implementation of N–770–5, rather than N–770–2
- Therefore, the NRC finds that this condition is needed to clarify the examination requirements in Paragraph 3 of N–754–2 and to ensure that N–770–5 is implemented as required by § 50.55a(g)(6)(ii)(F).

Code Case N–766–4 [Supplement 0, 2021 Edition]

Type: Revised

Title: Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1

The proposed conditions on Code Case N–766–4 are identical to the conditions on N–766–3 that were approved by the NRC in the previous revision of RG 1.147. When the ASME revised N–766, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 21 of RG 1.147.

Code Case N–847–1 [Supplement 0, 2021 Edition]

Type: Revised

Title: Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1

The proposed conditions on Code Case N–847–1 are identical to the conditions on N–847 that were approved by the NRC in the previous revision of RG 1.147. When the ASME revised N–847, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 21 of RG 1.147.

Code Case N–880–1 [Supplement 0, 2021 Edition]

Type: Revised

Title: Alternative to Procurement Requirements of IWA–4143 for Nonstandard Welded Fittings, Section XI, Division 1

Code Case N–880–1 removes the size limitation in the Case by eliminating the NPS 2 size limit. The NRC does not agree with removing the small size limitation (NPS 2 and under). The NRC is proposing to continue to limit the scope of the code case to NPS 2 (DN 50) or smaller fittings because there is insufficient technical basis to expand the application to items larger than NPS 2 (DN 50). The only justification provided for this change was that it is an arbitrary limitation. However, the limitation to NPS 2 (DN 50) and under was based on the capacity of the reactor coolant makeup system being able to safely shutdown the plant if these fittings fail, and therefore, is not an arbitrary limitation.

Without a condition, approval of the code case would allow the use of these non-standard or specialized fittings in any Class 1, 2 and 3 systems, including the reactor coolant makeup system. Thus, the failure of these fittings, which lack operating experience to demonstrate their reliability, could also affect the reactor coolant makeup system's ability to provide sufficient makeup capacity. Therefore, the NRC is proposing a new condition to limit the use of Code Case N–880–1 to NPS 2 (DN 50) or smaller fittings.

Conditions 2 and 3 are identical to the conditions on N–880 that were approved by the NRC in previous revision of RG 1.147. When the ASME revised N–880, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 21 of RG 1.147.

Code Case N–899 [Supplement 3, 2019 Edition]

Type: New

Title: Weld Residual Stress Distributions for Piping and Vessel Nozzle Butt Welds Fabricated With UNS N06082, UNS W86182, UNS N06052, or UNS W86152 Weld Filler Material, Section XI, Division 1

Code Case N–899 provides an alternative method for calculating the values of weld residual stress as a function of distance through the wall thickness for dissimilar metal butt welds in the reactor coolant pressure boundary. The NRC notes that Code Case N–899 may be used in conjunction with methodologies similar to those in Section XI, nonmandatory Appendix A, Article A–3000 to calculate the crack tip stress intensity factor, K_I, for inside surface connected flaws in piping or vessel nozzle butt welds fabricated with UNS N06082, UNS W86182, UNS N06052, or UNS W86152 weld filler material.

In many cases, plants do not have information on the actual repairs performed to Alloy 82/182 butt welds. However, operating experience and records indicate that repairs were common, including some welds being repaired multiple times. Weld repairs generally cause the weld residual stress to become more severe. Given the uncertainty in whether a weld repair exists or not, the NRC staff has generally found that it is appropriate to assume that a repair is present for the purposes of flaw evaluation. Therefore, consistent with the established NRC position for the weld residual stress distribution analysis for the subject welds of this code case, the inside surface repair residual stress distributions of Code Case N–899 are acceptable for use provided all known and documented repairs are bounded by the 50-percent through wall repair assumed in the case. Based on this discussion, the NRC is proposing the condition that only the standard weld residual stress distributions with repairs included, Paragraphs –2331 and –2332, would be approved for use and only if they bound all known or documented repairs previously performed on the subject weld.

Similarly, the NRC also notes that when Paragraph –3000, Calculation of Residual Stress Using Finite Element Analysis, is applied as an option to use finite element analysis to calculate weld residual stress distributions, the weld residual stress analysis should incorporate a minimum of a 50 percent through-wall inside surface connected weld repair as part of the analysis. This is consistent with the NRC position on repairs and weld residual stress calculations stated in this discussion. If documentation of a repair is found or a previous repair is known, the weld residual stress analysis must be evaluated to determine if it is bounded by the 50-percent repair by modeling or flaw evaluation. The more conservative of either 50-percent repair assumption or the combination of all known previous repairs should be used in the development of the weld residual stress distribution. Therefore, the NRC is proposing a condition: when developing a plant-specific weld residual stress distribution, the finite element analysis calculation of the weld residual stress distribution must use the more bounding of either an assumed previous inside surface repair of 50 percent through-wall or the combination of all known or documented previous repairs.

Code Case N–906 [Supplement 7, 2019 Edition]

Type: New

Title: Flaw Evaluation Procedure for Cast Austenitic Stainless Steel Piping and Adjacent Fittings, Section XI, Division 1

Code Case N–906 provides flaw evaluation procedure for cast austenitic stainless steel piping and fittings adjacent to girth welds as alternatives to the methods in Nonmandatory Appendix C, C–4210 and C–6330. Paragraph 1(b) of Code Case N–906 states that the provisions of this Case shall be applied to operating temperatures of 500 °F to 625 °F (260 °C to 330 °C). The paragraph also states that, if a thermal transient below this range of temperatures occurs at the flaw location, the appropriate toughness, J_i, at the minimum transient temperature shall be used along with the applied stresses at that minimum transient temperature. Accordingly, if a transient occurs below the specified temperature range, the code case requires that the flaw evaluation use the fracture toughness and applied stresses at the minimum transient temperature.

However, the limiting fracture toughness and relevant applied stress for the flaw under the transient may not be those at the minimum transient temperature. For example, Figure 32 of NUREG/CR–4513, Revision 2, ''Estimation of Fracture Toughness of Cast Stainless Steels during Thermal Aging in LWR Systems,'' shows that the fracture toughness of a cast austenitic stainless steel material at room temperature may be higher than that at an elevated temperature. Therefore, the NRC is proposing a condition to delete the reference to the minimum transient temperature that is associated with the appropriate fracture toughness and applied stresses for the flaw evaluation. The condition also clarifies that the flaw evaluation must use the fracture toughness and applied stresses that are limiting for the flaw.

Code Case N–921 [Supplement 3, 2021 Edition]

Type: New

Title: Alternative 12-Year Inspection Interval Duration, Section XI, Division 1

Code Case N–921 increases the inservice inspection interval defined in Section XI, IWA–2400 from 10 years to 12 years. Section XI, IWA–2400 requires that licensees have an inservice inspection program that includes, for example, inspection plans, inservice inspection interval dates, and identification of code cases to be applied during the interval. While IWA–2400 requires that plants specify the edition or addenda of Section XI that will be applied during the interval, Section XI does not prescribe what constitutes an appropriate edition or addenda. In fact, IWA–2410 states that edition or addenda is ''as required by the regulatory authority having jurisdiction at the plant site.'' The regulation at § 50.55a(g)(4)(ii) provides the regulatory basis for licensees determining which edition or addenda to apply to inservice inspection programs for a successive interval. This regulation assumes a 10-year inservice inspection interval.

A licensee applying this code case is, therefore, required by § 50.55a(4)(g)(ii) to update the code of record every 10 years. The inservice inspection interval and the code of record update interval should be synchronized to promote order and predictability in licensee inservice inspection programs. As part of this rulemaking, the NRC also is updating § 50.55a to allow flexibility in how often the code of record is updated, provided that licensees update to the 2019 Edition of Section XI. The NRC, therefore, proposes to condition Code Case N–921 to require updating to the 2019 Edition of Section XI. This condition would ensure that the desired order and predictability in licensee inservice inspection programs is maintained.

ASME Operation and Maintenance Code Cases (DG–1407/RG 1.192)

Code Case OMN–31 [2022 Edition]

Type: New

Title: Alternative to Allow Extension of ISTA–3120 Inservice Examination

and Test Intervals From 10 Years to 12 Years

For the same reasons explained for Section XI Code Case N–921, the NRC is restricting the use of OMN–31 to licensees implementing the ASME OM Code, 2020 Edition. As indicated in DG–1407/RG 1.192, this OM Code Case may be applied by licensees implementing the ASME OM Code, 2020 Edition through the latest edition of the ASME OM Code incorporated by reference in § 50.55a, contrary to the ASME OM Code Case Applicability Index, dated July 1, 2022.

Other OM Code Cases in Table 2 of Proposed Revision 5 to RG 1.192

No changes were made to the OM Code Cases listed in Table 2 of the proposed Revision 5 to RG 1.192 (with the exception of new Code Case OMN–31, discussed previously) from the versions that were listed in OM Code Cases listed in Table 2 of Revision 4 to RG 1.192. Therefore, the conditions on the OM Code Cases listed in Table 2 of the proposed Revision 5 to RG 1.192 (with the exception of new Code Case OMN–31) are identical to the conditions on those OM Code Cases that were approved by the NRC in Revision 4 of RG 1.192. The OM Code Cases listed in Table 2 of the proposed Revision 5 to RG 1.192 were re-affirmed by the ASME for the 2022 Edition of the OM Code with no change to those OM Code Cases. Therefore, the conditions on the OM Code Cases in Table 2 are retained in proposed Revision 5 of RG 1.192.

D. ASME Code Cases Not Approved for Use (DG–1408/RG 1.193)

The ASME Code Cases that are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, ''ASME Code Cases not Approved for Use.'' In addition to the ASME Code Cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes code cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. Regulatory Guide 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not proposing to adopt any of the code cases listed in RG 1.193.

E. Proposed Revision to Code of Record Update Requirements

Nuclear power plant licensees maintain their IST and ISI programs, respectively, in accordance with the requirements of the ASME OM Code and ASME BPV Code, Section XI, as incorporated by reference in § 50.55a. The initial concept of a 10-year ISI interval first appeared in the 1970 Edition of the ASME BPV Code, Section XI, in paragraph IS–240. This 10-year interval (referred to as the ISI interval) is only related to ASME ISI requirements. There is a corresponding 10-year IST interval for the OM Code requirements.

Later, in a final rule published in February 1976 (41 FR 6256), the NRC revised § 50.55a to require IST code of record updates every 20 months and ISI code of record updates every 40 months. This requirement was (and still is) independent from the ISI and IST intervals defined by the respective codes. In the early years of the development of ISI and IST programmatic requirements, the NRC requirement to update the codes of record was not synchronized with the ASME concept of an IST or ISI interval. In January 1979 (44 FR 3719), the NRC proposed changes to § 50.55a to extend the 20- and 40-month update intervals to 120 months (10 years), in order to promote consistency with the 10-year interval in the ASME codes. The corresponding final rule was published in October 1979 (44 FR 57912).

Paragraph IWA–2420 of the 1989 Edition and later of ASME BPV Code, Section XI, requires that nuclear plant owners prepare inspection plans and schedules for each ISI interval. These plans should include a listing of all code cases to be applied during the ISI interval and alternatives authorized under § 50.55a(z). The proposed revision to § 50.55a in this rulemaking does not alter those requirements. In defining the inspection program, Paragraph IWA–2410 of ASME BPV Code, Section XI, states, ''The Code Edition and Addenda for preservice inspection and for initial and successive inservice inspection intervals shall be as required by the regulatory authority having jurisdiction at the plant site.'' Therefore, while ASME BPV Code, Section XI, requires plant owners to declare which edition of Section XI will be applied during each ISI interval, the code does not specify what constitutes an appropriate edition of Section XI.

Similarly, paragraph ISTA–3110, ''Test and Examination Plans,'' in the 2020 Edition of the ASME OM Code requires that nuclear plant owners prepare test plans for the preservice test period, initial IST intervals, and subsequent IST intervals. These plans should include a listing of all code cases to be applied during the IST interval, relief granted under § 50.55a(f), and alternatives authorized under § 50.55a(z). Paragraph ISTA–3110 requires in subparagraph (a) that each IST plan shall include ''the edition and addenda of this Section that apply to the required tests and examinations.'' Therefore, while the ASME OM Code requires nuclear power plant owners to declare which edition and addenda of the OM Code will be applied during each IST interval, the OM Code does not specify what constitutes an appropriate edition and addenda of the OM Code.

Thus, neither the ASME BPV Code, Section XI, nor the OM Code specify which edition to use. Rather, the NRC's regulations in § 50.55a determine the appropriate edition and addenda of the ASME BPV Code, Section XI, or the OM Code to be applied in each ISI or IST interval respectively. The changes proposed to these code of record requirements in this rulemaking are focused on that aspect alone.

The NRC does not intend the proposed extension of the update interval to affect the orderly implementation of IST and ISI programs. Therefore, the proposed rule is designed to synchronize the requirements of ASME Codes and § 50.55a as much as possible. For licensees with codes of record prior to ASME BPV Code, Section XI, 2019 Edition, and OM Code, 2020 Edition, as incorporated by reference in § 50.55a, the proposed rule specifies that the code of record interval for the ISI and IST programs shall be the same as the ISI interval or IST interval. This is consistent with the current requirements. For licensees with codes of record of ASME BPV Code, Section XI, 2019 Edition, or later editions and addenda, and ASME OM Code, 2020 Edition, or later editions, as incorporated by reference in § 50.55a, the proposed rule specifies that the code of record interval for the ISI and IST programs shall be updated every two consecutive ISI intervals or IST intervals, respectively.

With this revised requirement to update the code of record, the NRC does not intend that the code of record interval for an IST or ISI program will exceed 25 years, even if ASME extends the IST interval or the ISI interval beyond 12 years in the ASME OM Code or the ASME BPV Code, respectively. The 25-year maximum code of record interval allows the same code of record to be used for two consecutive ISI or IST intervals, each up to 12 years, plus the one-time, 1-year extension for IST and ISI programs as specified in the ASME OM Code and ASME BPV Code, respectively. The Commission has not approved extending the code of record

intervals beyond the 25-year maximum proposed in this rulemaking. If future editions of the ASME OM Code or ASME BPV Code or future code cases extend the IST interval or ISI interval, respectively, beyond 12 years, the NRC would need to maintain the proposed 25-year maximum code of record interval.

The concept of a 120-month interval is referenced repeatedly in § 50.55a. However, the current language is not consistent or well-defined. As such, the NRC proposes to clarify the language by introducing certain definitions in § 50.55a(y). The proposed definitions include code of record, code of record interval, inservice examination and test interval, inservice inspection program, inservice testing program, and inspection interval. The NRC also proposes to update the language throughout § 50.55a to be consistent with the proposed definitions.

With respect to relief from impractical IST requirements as requested in accordance with § 50.55a(f)(5)(iv), the NRC proposes that the duration of the granted relief be changed from the ''120-month interval of operation'' to the standardized definitions of the Inservice Examination and Test Interval. At the end of the Inservice Examination and Test Interval, the licensee would reassess whether the IST requirement continues to be impractical and submit an updated relief request as necessary. The NRC is proposing similar revisions for the ISI requirements in § 50.55a(g)(5)(iii) and (iv).

With respect to alternative requests in accordance with § 50.55a(z), the NRC will address the duration of each new authorized alternative in the safety evaluation describing its review of the request consistent with the current procedures for evaluating alternative requests. Existing NRC-approved alternatives were approved based on the IST or ISI interval. The proposed rulemaking language regarding the code of record interval does not extend the approval timeframe for these existing alternatives. Licensees seeking to extend the timeframe of approved alternatives therefore would need to submit an alternative request per § 50.55a(z) to continue using previously granted alternatives in a subsequent IST or ISI interval in the same code of record update interval. Licensees may request future alternatives based upon the code of record interval.

In addition, the NRC proposes to update references to the 10-year service period in appendix J to 10 CFR part 50 to be consistent with the definitions in the proposed § 50.55a(y), in which the NRC proposes to allow the ISI period to be extended to 12 years. The current rules for Type A tests under Option A (prescriptive requirements) explicitly reference the 10-year service period required in § 50.55a for inservice inspections. Consistent with the NRC's stated goal of maintaining consistency across all NRC rules regarding ISI and IST programs, the NRC is proposing revisions to appendix J to 10 CFR part 50 to directly reference the interval defined in a revised 10 CFR 50.55a, to accommodate a 12-year ISI interval. For the reasons stated in SECY–22–0075, the NRC proposes to make this revision without changing the intent or basis for the Type A test requirement in appendix J to 10 CFR part 50.

Licensees are currently required to submit various documents, such as IST plans and schedules or Section XI flaw evaluations, to the NRC each IST or ISI interval. The language proposed in this rulemaking regarding the code of record intervals does not alter those submittal requirements in any way. Therefore, licensees should carefully distinguish requirements that apply to the code of record interval from those that apply to the IST or ISI interval. For example, § 50.55a(f)(7) requires IST plans to be submitted within 90 days of their implementation for the applicable 120-month IST program interval. This proposed rule would revise the terms used in paragraph (f)(7) for consistency with the new definitions, but submittal of IST plans would still be required within 90 days of their implementation for the applicable IST interval.

IV. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

- The NRC proposes to add § 50.55a(y) to include definitions of certain terms that may be important for delineating requirements related to IST and ISI programs. Are the proposed definitions appropriate for their intended purpose? Should the NRC consider defining other terms related to IST and ISI? Please provide the basis for your response.
- The NRC proposes to revise § 50.55a(b)(5)(ii) and (iii) to relate those requirements regarding superseded and annulled code cases to the code of record interval, as defined in § 50.55a(y) of the proposed rule. Should the NRC instead consider relating those requirements to the ISI and IST interval? Please provide the basis for your response.

V. Section-by-Section Analysis

The following paragraphs in § 50.55a would be revised as follows:

Paragraph (a)

This proposed rule would revise the introductory text to paragraph (a) by removing ''standards'' and adding in its place ''materials'' or ''all approved materials'', as applicable, thereby aligning with the latest guidance on incorporation by reference.

Paragraph (a)(3)(i)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.84, Revision 39,'' by removing ''Revision 39'' and adding in its place ''Revision 40'' and changing the month and year for the document's revision date.

Paragraph (a)(3)(ii)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.147, Revision 20'' by removing ''Revision 20'' and adding in its place ''Revision 21'' and changing the month and year for the document's revision date.

Paragraph (a)(3)(iii)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.192, Revision 4'' by removing ''Revision 4'' and adding in its place ''Revision 5'' and changing the month and year for the document's revision date.

Paragraph (b)(5)(ii)

This proposed rule would amend paragraph (b)(5)(ii) by replacing the text ''120-month interval'' with the text ''code of record interval'' and ''120-month ISI program intervals'' with the text ''code of record intervals.''

Paragraph (b)(5)(iii)

This proposed rule would amend paragraph (b)(5)(iii) by replacing the text ''120-month interval'' with the text ''code of record interval.''

Paragraph (b)(6)(ii)

This proposed rule would amend paragraph (b)(6)(ii) by replacing the text ''120-month interval'' with the text ''code of record interval'' and ''120-month ISI program'' with the text ''code of record.''

Paragraph (b)(6)(iii)

This proposed rule would amend paragraph (b)(6)(iii) by replacing the text ''120-month interval'' with the text ''code of record interval.''

Paragraph (f)(4)(i)

This proposed rule would revise the heading and text of paragraph (f)(4)(i) to replace the text ''120-month'' with the text ''code of record.'' This proposed rule also would insert the text ''no more than'' to clarify that licensees may consider ASME OM Code editions incorporated by reference less than 18 months before the date of issuance of the operating license or before the date of initial fuel load.

Paragraph (f)(4)(ii)

This proposed rule would revise the heading and text of paragraph (f)(4)(ii) to replace the text ''120-month'' with the text ''code of record.'' This proposed rule also would insert the text ''no more than'' to clarify that licensees may consider ASME OM Code editions incorporated by reference less than 18 months before the start of the code of record interval.

Paragraph (f)(5)(iv)

This proposed rule would amend paragraph (f)(5)(iv) by replacing the text ''120-month interval of operation'' with the text ''inservice examination and test interval.''

Paragraph (f)(7)

This proposed rule would amend paragraph (f)(7) by replacing the text ''120-month IST Program interval'' with the text ''inservice examination and test interval.''

Paragraph (g)(4) Introductory Text

This proposed rule would amend paragraph (g)(4) introductory text by inserting the text ''BPV'' into the text ''ASME Code Class 1, Class 2, and Class 3'' to clarify the language.

Paragraph (g)(4)(i)

This proposed rule would revise paragraph (g)(4)(i) to replace the text ''120-month inspection'' and ''120-month ISI'' with the text ''code of record''; insert the text ''BPV'' into the text ''ASME Code Class 1, Class 2, and Class 3'' to clarify the language; and insert the text ''no more than'' to clarify that licensees may use ASME BPV Code, Section XI, editions incorporated by reference less than 18 months before the start of the code of record interval.

Paragraph (g)(4)(ii)

This proposed rule would revise paragraph (g)(4)(ii) to replace the text ''120-month,'' ''120-month inspection,'' and ''120-month ISI'' with ''code of record''; insert the text ''BPV'' into the text ''ASME Code Class 1, Class 2, and Class 3'' to clarify the language; insert the text ''no more than'' to clarify that licensees may use ASME BPV Code, Section XI, editions incorporated by reference less than 18 months before the start of the code of record interval; remove outdated language; and delete the term ''inservice'' to ensure consistency with the definitions in the proposed § 50.55a(y).

Paragraph (g)(5)(i)

This proposed rule would amend the heading for paragraph (g)(5)(i) by replacing the text ''ISI Code editions and addenda'' with the text ''code of record.''

Paragraph (g)(5)(ii)

This proposed rule would amend paragraph (g)(5)(ii) by replacing the text ''period'' with the text ''code of record interval.''

Paragraph (g)(5)(iii)

This proposed rule would amend paragraph (g)(5)(iii) by removing the text ''120-month.'' This proposed rule also would delete the term ''inservice'' to ensure consistency with the definitions in the proposed § 50.55a(y).

Paragraph (g)(5)(iv)

This proposed rule would amend paragraph (g)(5)(iv) by removing the text ''120-month.''

Paragraph (y)

This proposed rule would add paragraph (y) to provide definitions of important terms used in § 50.55a: *Code of record, Code of record interval, Inservice examination and test interval, Inservice inspection program, Inservice examination and testing program,* and *Inspection interval.*

Appendix J to 10 CFR Part 50

This proposed rule would revise paragraph D.1.(a) in section III of option A to replace the text ''10-year service period'' with the text ''inservice inspection interval, as defined in 10 CFR 50.55a(y),'' and replace the text ''10-year plant'' with the text ''final plant''. This proposed rule also would remove footnote 2 and redesignate footnote 3 as footnote 2.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

VIII. Backfitting and Issue Finality

The provisions in this proposed rule would allow licensees and applicants to voluntarily apply NRC-approved code cases, sometimes with NRC-specified conditions. The approved code cases are listed in three RGs that are proposed to be incorporated by reference into § 50.55a. An applicant's or a licensee's voluntary application of an approved code case does not constitute backfitting, because there is no imposition of a new requirement or new position.

Similarly, voluntary application of an approved code case by a 10 CFR part 52 applicant or licensee does not represent NRC imposition of a requirement or action, and therefore is not inconsistent with any issue finality provision in 10 CFR part 52. For these reasons, the NRC finds that this proposed rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the issue finality criteria in 10 CFR part 52 are met.

Other circumstances where the NRC does not apply the Backfit Rule to the approval and requirement to use later code editions and addenda are as follows:

1. When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later code provision, limits the use of the later code provision, or supplements the provisions in a later code, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the code in the preamble to and regulatory analysis for the rule.

2. When an NRC exception relaxes an existing ASME BPV Code or OM Code provision but does not prohibit a licensee from using the existing code provision, the Backfit Rule does not

apply because the NRC is not imposing new requirements.

3. Modifications and limitations imposed during previous routine updates of § 50.55a have established a precedent for determining which modifications or limitations are backfits, or require a backfit analysis (*e.g.,* final rule dated September 10, 2008 (73 FR 52731), and a correction dated October 2, 2008 (73 FR 57235)). The application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

The incorporation by reference and adoption of a requirement mandating the use of a later ASME BPV Code or OM Code may constitute backfitting in some circumstances. In these cases, the NRC would perform a backfit analysis or prepare documented evaluation in accordance with § 50.109. These include the following:

1. When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit (*e.g.,* 61 FR 41303; August 8, 1996).

2. When the NRC requires implementation of a later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language (*e.g.,* 64 FR 51370; September 22, 1999).

3. When the NRC takes an exception to an ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different from the later Code (*e.g.,* 67 FR 60529; September 26, 2002).

ISI/IST Update Backfitting Considerations: Section XI of the ASME BPV Code and the ASME OM Code

Proposed revisions to the code of record intervals of Section XI of the ASME BPV Code and the ASME OM Code are related to the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV Code (Section XI) and OM Code. As previously mentioned, the NRC's longstanding regulatory practice has been to incorporate later versions of the ASME Codes into § 50.55a. Under the current § 50.55a, licensees must revise their ISI and IST programs every 120 months to the latest edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a 18 months before the start of a new 120-month ISI and IST interval. Thus, when the NRC approves and requires the use of a later version of the Code for ISI and IST, it is implementing this longstanding regulatory practice and requirement. The NRC is proposing to revise the requirement to update to the latest edition and addenda before the start of every other ISI and IST interval. This proposed revision would be a voluntary relaxation, and thus not a backfit, because licensees will continue to have the option to voluntarily update before the start of each ISI or IST interval under §§ 50.55a(f)(4)(iv) or (g)(4)(iv).

Conclusion

The NRC finds that the proposed incorporation by reference into § 50.55a of the three RGs containing the latest NRC-approved code cases and the proposed revision of § 50.55a to the identified ISI/IST interval conditions, does not constitute backfitting or represent an inconsistency with any issue finality provisions in 10 CFR part 52.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

X. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption.

As voluntary alternatives to the ASME Code, NRC-approved code cases provide an equivalent level of safety. The IST and ISI code of record update frequency is changing the update frequency of a program. Therefore, the probability or consequences of accidents is not changed. There also are no significant, non-radiological impacts associated with this action because no changes would be made affecting nonradiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there would be no significant offsite impact to the public from this action.

XI. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection(s).

Type of submission, new or revision: Revision.

The title of the information collection: Domestic Licensing of Production and Utilization Facilities: Updates to Incorporation by Reference and Regulatory Guides.

The form number if applicable: Not applicable.

How often the collection is required or requested: On occasion.

Who will be required or asked to respond: Operating power reactor licensees and applicants for power reactors under construction.

An estimate of the number of annual responses: 1.32 (0.66 reporting and 0.66 recordkeeping).

The estimated number of annual respondents: 0.66.

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 158.6.

Abstract: This proposed rule is the latest in a series of rulemakings that incorporate by reference the latest versions of several RGs identifying new and revised unconditionally or conditionally acceptable ASME Code Cases that are approved for use.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper

performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of the burden of the proposed information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the Office of Management and Budget (OMB) clearance package is available in ADAMS under Accession No. ML22243A007 or can obtained free of charge by contacting the NRC's Public Document reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resources@nrc.gov*. You may obtain information and comment submissions related to the OMB clearance package by searching on *https://www.regulations.gov* under Docket ID NRC–2018–0291.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal rulemaking website*: Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0291.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0011), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov*.

Submit comments by April 5, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use the ASME BPV and OM Code Cases, which are ASME-approved voluntary alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME Code Cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 40; RG 1.147, Revision 21; and RG 1.192, Revision 5. The RGs list the ASME Code Cases that the NRC has approved for use. The ASME Code Cases are national consensus standards as defined in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119. The ASME Code Cases constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

XIII. Incorporation by Reference

The NRC proposes to incorporate by reference three NRC RGs that list new and revised the ASME Code Cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required editions and addenda of the ASME BPV Code and the ASME OM Code. The draft regulatory guides, DG–1405, DG–1406, and DG–1407, will correspond to final RG 1.84, Revision 40; RG 1.147, Revision 21; and RG 1.192, Revision 5, respectively.

- RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 40 (Draft Regulatory Guide (DG)–1405), would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in this revised RG as voluntary alternatives to ASME engineering standards for the construction of nuclear power plant components.
- RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 21 (DG–1406), would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in this revised RG as voluntary alternatives to ASME engineering standards for the inservice inspection of nuclear power plant components.
- RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 5 (DG–1407), action would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in this revised RG as voluntary alternatives to ASME engineering standards for the inservice examination and testing of nuclear power plant components.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the considerations for determining ''reasonable availability'' vary by class of interested parties. The NRC identified six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, ''small entities'' has the same meaning as set out in § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a ''large entity'' is one that does

not qualify as a ''small entity'' under § 2.810.

• Non-governmental organizations with institutional interests in the matters regulated by the NRC.

• Other Federal agencies, States, local governmental bodies (within the meaning of § 2.315(c)).

• Federally recognized and State-recognized Indian tribes.

• Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The three draft RGs that the NRC proposes to incorporate by reference in this proposed rule are available without cost and can be read online or downloaded online. The draft RGs can be viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov.*

Because the three draft regulatory guides, and eventually, the final regulatory guides, are available in various forms at no cost, the NRC determines that the three draft regulatory guides, DG–1405, DG–1406, and DG–1407, and final RG 1.84, Revision 40; RG 1.147, Revision 21; and RG 1.192, Revision 5, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

XIV. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking.

XV. Public Meeting

The NRC may conduct a public meeting on the proposed rule for the purpose of describing the changes to the code of record update frequency and its impact on the ISI and IST programs. The staff will also answer questions from the public regarding this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting, if held, in the **Federal Register**, on *Regulations.gov*, and on the NRC's public meeting website within at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

XVI. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

TABLE III—RULEMAKING-RELATED DOCUMENTS

Document	ADAMS accession No./ **Federal Register** citation
SRM–SECY–21–0029, ''Rulemaking Plan on Relaxation of Inservice Testing and Inservice Inspection Program Update Frequencies Required in 10 CFR 50.55a,'' dated November 8, 2021.	ML21312A490.
SECY–21–0029, ''Rulemaking Plan on Relaxation of Inservice Testing and Inservice Inspection Program Update Frequencies Required in 10 CFR 50.55a,'' dated March 15, 2021.	ML20273A286.
SECY–22–0075, ''Staff Requirements-SECY–21–0029 Inservice Testing and Inservice Inspection Program Rulemakings Update [NRC–2018–0291/3150–AK23],'' dated August 10, 2022.	ML22124A178.
Rulemaking-Proposed Rule-Draft Regulatory Analysis for American Society of Mechanical Engineers Code Cases, RG 1.84, Rev. 40; RG 1.147, Rev. 21; RG 1.192 Rev. 5; RG 1.193, Rev. 8, dated January 2023.	ML22243A006.
Rulemaking-Proposed Rule-OMB Clearance Package for American Society of Mechanical Engineers Code Cases, RG 1.84, Rev. 40; RG 1.147, Rev. 21; RG 1.192 Rev. 5; RG 1.193, Rev. 8.	ML22243A007.
RG 1.193, ASME Code Cases Not Approved for Use, Revision 8 (DG–1408), dated January 2023	ML22196A065.
ASME OM Code Case Applicability Index, dated July 1, 2022	ML22279A967N.
ASME Letter to NRC, ''ASME Request for Including Specific Code Cases in Draft Revision 21 of Regulatory Guide 1.147,'' dated December 22, 2021.	ML22046A112.
Final Rule—''Codes and Standards for Nuclear Power Plants and Technical Information,'' February 12, 1976	41 FR 6256
Proposed Rule—''Domestic Licensing of Production and Utilization Facilities Codes and Standards for Nuclear Powerplants,'' January 18, 1979.	44 FR 3719.
Final Rule—''Domestic Licensing of Production and Utilization Facilities; Codes and Standards for Nuclear Powerplants,'' October 9, 1979.	44 FR 57912.
Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL, August 8, 1996	61 FR 41303.
Proposed Rule—Industry Codes and Standards; Amended Requirements, September 22, 1999	64 FR 51370.
Final Rule—Industry Codes and Standards; Amended Requirements, September 26, 2002	67 FR 60529.
Final Rule—''Incorporation by Reference of ASME BPV and OM Code Cases,'' July 8, 2003	68 FR 40469.
Final Rule—''Approval of American Society of Mechanical Engineers Code Cases,'' March 3, 2022	87 FR 11934.
Final Rule—''American Society of Mechanical Engineers 2019–2020 Code Editions Incorporation by Reference,'' October 27, 2022.	87 FR 65128.

Documents Proposed To Be Incorporated by Reference

The NRC proposes to incorporate by reference three NRC RGs, as set forth in Table IV, that list new and revised ASME Code Cases that the NRC is proposing to approve as voluntary alternatives to certain provisions of NRC-required editions and addenda of the ASME BPV Code and the ASME OM Code.

TABLE IV—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55a

Document	ADAMS accession No./ **Federal Register** citation
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 40 (DG–1405)	ML22195A282.
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 21 (DG–1406)	ML22195A284.

TABLE IV—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55a—Continued

Document	ADAMS accession No./ **Federal Register** citation
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 5 (DG–1407)	ML22196A063.

Code Cases for Approval in This Proposed Rule

The ASME BPV Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME BPV Code, as set forth in Table V, are being made available by the ASME for read-only access during the public comment period on *https://go.asme.org/NRC-ASME.*

The ASME OM Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME OM Code, as set forth in Table V, are being made available for read-only access during the public comment period by the ASME on *https://go.asme.org/NRC-ASME.*

The ASME is making the code cases listed in Table V available for limited, read-only access at the request of the NRC. The NRC believes that stakeholders need to be able to read these code cases in order to provide meaningful comment on the three RGs (listed in Table IV) that the NRC is proposing to incorporate by reference into § 50.55a. It is the NRC's position that the listed code cases, as modified by any conditions contained in the three RGs and thus serving as alternatives to requirements in § 50.55a, would be legally-binding regulatory requirements. An applicant or licensee must comply with a listed code case and any conditions to be within the scope of the NRC's approval of the code case as a voluntary alternative for use. These requirements cannot be fully understood without knowledge of the code case to which the proposed condition applies, and to this end, the NRC has requested that the ASME provide limited, read-only access to the code cases in order to facilitate meaningful public comment.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL

Boiler and Pressure Vessel Code Section III

Code case No.	Supplement	Title
N–351–1	3 (2021 Edition)	Use of Standard Subsize Charpy V-Notch Impact Specimens, Section III, Division 1; Section III, Division 2; Section III, Division 3.
N–893	4 (2019 Edition)	Use of Alloy Steel Bar and Mechanical Tubing in Class 2 and 3 Patented Mechanical Joints and Fittings, Section III, Division 1.
N–900	3 (2019 Edition)	Alternative Rules for Level D Service Limits of Class 1, 2, and 3 Piping Systems, Section III, Division 1.
N–901	4 (2019 Edition)	Use of ASME SA–494 Grade M35–1 for Line Valve Bodies and Bonnets, and Bodies, Bonnets, and Yokes of Pressure Relief Valves for Class 2 and 3 Construction, Section III, Division 1.
N–902	5 (2019 Edition)	Thickness and Gradient Factors for Piping Fatigue Analyses, Section III, Division 1.
N–904	6 (2019 Edition)	Alternative Rules for Simplified Elastic–Plastic Analysis, Section III, Division 1.
N–905	6 (2019 Edition)	Alternate Design Fatigue Curves to Those Given in For Section III Appendices, Mandatory Appendix I, Figures I–9.1 and I–9.1M, Section III, Division 1.
N–908	7 (2019 Edition)	Use of Ferritic/Austenitic Wrought WPS32750/CRS32750 Fittings of Seamless or Welded Construction Conforming to SA–815, Class 3, Section III, Division 1.
N–910	7 (2019 Edition)	Use of 25Cr-7Ni-4Mo-N (Alloy UNS S32750 Austenitic/Ferritic Duplex Stainless Steel) Forgings, Plate, and Welded and Seamless Pipe and Tubing Conforming to SA–182, SA–240, SA–789, or SA–790, Section III, Division 1.
N–919	2 (2021 Edition)	Alternative Fatigue Evaluation Method to Consider Environmental Effects on Class 1 Components Section III, Division 1.
N–920	2 (2021 Edition)	Alternative Fatigue Design Curves for Ferritic Steels With Ultimate Tensile Strengths (UTS) ≤ 80 ksi (552 MPa) and Austenitic Steels, Section III, Division 1.
N–71–21	0 (2021 Edition)	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N–570–3	0 (2021 Edition)	Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1.

Boiler and Pressure Vessel Code Section XI

Code case No.	Supplement	Title
N–561–4	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping, Section XI, Division 1.
N–562–4	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N–597–5	0 (2021 Edition)	Evaluation of Pipe Wall Thinning, Section XI, Division 1.
N–638–11	2 (2019 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–661–5	0 (2021 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service Section XI, Division 1.
N–663–1	3 (2021 Edition)	Alternative Requirements for Classes 1 and 2 Surface Examinations, Section XI, Division 1.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL—Continued

N–733–1	6 (2019 Edition)	Mitigation of Flaws in NPS 3 (DN 80) and Smaller Nozzles and Nozzle Partial Penetration Welds in Vessels and Piping by Use of a Mechanical Connection Modification, Section XI, Division 1.
N–780–1	1 (2021 Edition)	Alternative Requirements for Upgrade, Substitution, or Reconfiguration of Examination Equipment When Using Appendix VIII Qualified Ultrasonic Examination Systems, Section XI, Division 1.
N–786–4	0 (2021 Edition)	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N–789–5	1 (2021 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–809–1	0 (2021 Edition)	Reference Fatigue Crack Growth Rate Curves for Austenitic Stainless Steels in Pressurized Reactor Water Environments, Section XI, Division 1.
N–853–1	0 (2021 Edition)	PWR Class 1 Primary Piping Alloy 600 Full Penetration Branch Connection Weld Metal Buildup for Material Susceptible to Primary Water Stress Corrosion Cracking, Section XI, Division 1.
N–860	6 (2019 Edition)	Inspection Requirements and Evaluation Standards for Spent Nuclear Fuel Storage and Transportation Containment Systems, Section XI, Division 1; Section XI, Division 2.
N–865–2	0 (2021 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Atmospheric Storage Tanks, Section XI, Division 1.
N–877–1	5 (2019 Edition)	Alternative Characterization Rules for Multiple Subsurface Radially Oriented Planar Flaws, Section XI, Division 1.
N–882–1	0 (2021 Edition)	Alternative Requirements for Attaching Nonstructural Electrical Connections to Class 2 and 3 Components, Section XI, Division 1.
N–885–1	3 (2021 Edition)	Alternative Requirements for Table IWB–2500–1, Examination Category B–N–1, Interior of Reactor Vessel, Category B–N–2, Welded Core Support Structures and Interior Attachments to Reactor Vessels, Category BN–3, Removable Core Support Structures, Section XI, Division 1.
N–888	5 (2019 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature SMAW or Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–896	2 (2019 Edition)	Reference Crack Growth Rate Curves for Stress Corrosion Cracking of Low Alloy Steels in Boiling Water Reactor Environments, Section XI, Division 1.
N–911	0 (2021 Edition)	Purchase, Exchange, or Transfer of Material Between Nuclear Owners, Section XI, Division 1.
N–912	0 (2021 Edition)	Alternative Requirements for Qualification of Material Suppliers and Acceptance of Materials, Section XI, Division 1.
N–913	0 (2021 Edition)	Alternative Examination Requirements for Class 1 Pressure-Retaining Welds in Control Rod Drive Housings, Section XI, Division 1.
N–917	2 (201 Edition)	Fatigue Crack Growth Rate Curves for Ferritic Steels in Boiling Water Reactor (BWR) Environments, Section XI, Division 1.
N–711–2	6 (2019 Edition)	Alternative Examination Coverage Requirements for Examination Category B F, B J, C–F–1, C–F–2, and R–A Piping Welds, Section XI, Division 1.
N–716–3	5 (2019 Edition)	Alternative Classification and Examination Requirements, Section XI, Division 1.
N–754–2	0 (2021 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.
N–766–4	0 (2021 Edition)	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N–847–1	0 (2021 Edition)	Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.
N–880–1	0 (2021 Edition)	Alternative to Procurement Requirements of IWA–4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.
N–899	3 (2019 Edition)	Weld Residual Stress Distributions for Piping and Vessel Nozzle Butt Welds Fabricated With UNS N06082, UNS W86182, UNS N06052, or UNS W86152 Weld Filler Material, Section XI, Division 1.
N–906	7 (2019 Edition)	Flaw Evaluation Procedure for Cast Austenitic Stainless Steel Piping and Adjacent Fittings, Section XI, Division 1.
N–921	3 (2021 Edition)	Alternative 12-yr Inspection Interval Duration, Section XI, Division 1.

Operation and Maintenance Code

Code case No.	Edition [6]	Title
OMN–28	2022 Edition	Alternative Valve Position Verification Approach to Satisfy ISTC–3700 for Valves Not Susceptible to Stem-Disk Separation.
OMN–29	2022 Edition	Pump Condition Monitoring Program.
OMN–30	2022 Edition	Alternative Valve Position Verification Approach to Satisfy ISTC–3700.
OMN–31	2022 Edition	Alternative to Allow Extension of ISTA–3120 Inservice Examination and Test Intervals From 10 Years to 12 Years.

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2018–0291. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–

[6] Each code case or ASME Applicability Index List indicates the ASME OM Code editions and addenda to which the code case applies, except where a condition is specified in § 50.55a or RG 1.192 related to technical content or applicability. This table indicates the latest OM Code edition at the time of this rulemaking.

2018–0291); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 50 as follows:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a:
■ a. Revise the introductory text of paragraph (a);
■ b. In paragraph (a)(3)(i):
■ i. Remove the text ''Revision 39'', wherever it appears, and add, in its place, the text ''Revision 40''; and
■ ii. Remove the text ''issued December 2021'' and add, in its place, the text ''issued January 2023'';
■ c. In paragraph (a)(3)(ii):
■ i. Remove the text ''Revision 20'', wherever it appears, and add, in its place, the text ''Revision 21''; and
■ ii. Remove the text ''issued December 2021'' and add in its place the text ''issued January 2023'';
■ d. In paragraph (a)(3)(iii):
■ i. Remove the text ''Revision 4'' and add, in its place, the text ''Revision 5'';
■ ii. Remove the text ''Revision 3'' and add, in its place, the text ''Revision 5''; and
■ iii. Remove the text ''issued December 2021'' and add, in its place, the text ''issued January 2023'';
■ e. In paragraphs (b)(5)(ii) and (iii) and (b)(6)(ii) and (iii), remove the text ''120-month interval'' and add in its place the text ''code of record interval'', wherever it appears; and
■ f. In paragraphs (b)(5)(ii) and (b)(6)(ii), remove the text ''120-month ISI program intervals'' and add in its place the text ''code of record intervals'', wherever it appears;
■ g. Revise paragraphs (f)(4)(i) and (ii);
■ h. In paragraph (f)(5)(iv), remove the text ''120-month interval of operation'', wherever it appears, and add in its place the text ''inservice examination and test interval'';
■ i. In paragraph (f)(7), remove the text ''120-month IST Program interval'', wherever it appears, and add in its place the text ''inservice examination and test interval'';
■ j. In paragraph (g)(4) introductory text, remove the text ''ASME Code Class 1, Class 2, and Class 3'' and add in its place the text ''ASME BPV Code Class 1, Class 2, and Class 3'';
■ k. Revise paragraphs (g)(4)(i) and (ii);
■ l. In the heading for paragraph (g)(5)(i), remove the text ''ISI Code editions and addenda'' and add in its place the text ''code of record'';
■ m. In paragraph (g)(5)(ii), remove the text ''period'' and add in its place the text ''code of record interval'';
■ n. In paragraph (g)(5)(iii), remove the text ''120-month'' and ''inservice'';
■ o. In paragraph (g)(5)(iv), remove the text ''120-month''; and
■ p. Add paragraph (y).

The revisions and additions read as follows:

§ 50.55a Codes and standards.

(a) *Documents approved for incorporation by reference.* The material listed in this paragraph (a) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Nuclear Regulatory Commission (NRC) and at the National Archives and Records Administration (NARA). Contact NRC at: the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources in this paragraph (a).

* * * * *

(f) * * *

(4) * * *

(i) *Applicable IST Code: Initial code of record interval.* Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial code of record interval must comply with the requirements in the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section on the date no more than 18 months before the date of issuance of the operating license under this part, or no more than 18 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME OM Code Cases listed in NRC Regulatory Guide 1.192, as incorporated by reference in paragraph (a)(3)(iii) of this section, subject to the conditions listed in paragraph (b) of this section).

(ii) *Applicable IST Code: Successive code of record intervals.* Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive code of record intervals must comply with the requirements of the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section no more than 18 months before the start of the code of record interval (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147 or NRC Regulatory Guide 1.192 as incorporated by reference in paragraphs (a)(3)(ii) and (iii) of this section, respectively), subject to the conditions listed in paragraph (b) of this section.

* * * * *

(g) * * *

(4) * * *

(i) *Applicable ISI Code: Initial code of record interval.* Inservice examination of components and system pressure tests conducted during the initial code of record interval must comply with the requirements in the latest edition and addenda of the ASME BPV Code incorporated by reference in paragraph (a) of this section on the date no more than 18 months before the date of issuance of the operating license under this part, or no more than 18 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, when using ASME BPV Code, Section XI, or NRC Regulatory Guide 1.192, when using the ASME OM Code, as incorporated by reference in paragraphs (a)(3)(ii) and (iii) of this section, respectively), subject to the conditions

listed in paragraph (b) of this section. Licensees may, at any time in their code of record interval, elect to use the Appendix VIII in the latest edition and addenda of the ASME BPV Code incorporated by reference in paragraph (a) of this section, subject to any applicable conditions listed in paragraph (b) of this section. Licensees using this option must also use the same edition and addenda of Appendix I, Subarticle I–3200, as Appendix VIII, including any applicable conditions listed in paragraph (b) of this section.

(ii) *Applicable ISI Code: Successive code of record intervals.* Inservice examination of components and system pressure tests conducted during successive code of record intervals must comply with the requirements of the latest edition and addenda of the ASME BPV Code incorporated by reference in paragraph (a) of this section no more than 18 months before the start of the code of record interval (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, when using ASME BPV Code, Section XI, or NRC Regulatory Guide 1.192, when using the ASME OM Code, as incorporated by reference in paragraphs (a)(3)(ii) and (iii) of this section), subject to the conditions listed in paragraph (b) of this section. Licensees may, at any time in their code of record interval, elect to use the Appendix VIII in the latest edition and addenda of the ASME BPV Code incorporated by reference in paragraph (a) of this section, subject to any applicable conditions listed in paragraph (b) of this section. Licensees using this option must also use the same edition and addenda of Appendix I, Subarticle I–3200, as Appendix VIII, including any applicable conditions listed in paragraph (b) of this section.

* * * * *

(y) *Definitions.* (1) *Code of record* means:

(i) For the ASME BPV Code, Section XI, the edition (and addenda) implemented by a licensee in accordance with the requirements of this section.

(ii) For the ASME OM Code, the edition (and addenda) implemented by a licensee in accordance with the requirements of this section.

(iii) For the ASME BPV Code, Section III, the edition implemented by a licensee in accordance with the requirements of this section, which may vary by component.

(2) *Code of record interval* means the period of time between the code of record updates required by paragraphs (f)(4) and (g)(4) of this section for the inservice inspection and inservice examination and test programs, respectively.

(i) For licensees with codes of record prior to ASME BPV Code, Section XI, 2019 Edition, and OM Code, 2020 Edition, as incorporated by reference in paragraph (a) of this section, the code of record interval is the same as the inspection interval or inservice examination and test interval.

(ii) For licensees with codes of record of ASME BPV Code, Section XI, 2019 Edition and OM Code, 2020 Edition, or later, as incorporated by reference in paragraph (a) of this section, the code of record interval is two consecutive inservice inspection or inservice examination and test intervals.

(3) *Inservice examination and test (IST) interval,* for the purposes of this section, means the inservice examination and test interval described by the licensee's code of record (paragraph ISTA–3120 of the ASME OM Code, 2001 Edition through 2009 Edition, or paragraph ISTA–3120 of the ASME OM Code, 2012 Edition and later).

(4) *Inservice inspection (ISI) program,* for the purposes of this section, means the set of all administrative and technical requirements pertaining to periodic examination of nuclear components, as specified in ASME BPV Code, Section XI, and this section, including but not limited to:

(i) The requirements of IWA–2400 of ASME BPV Code, Section XI, 1991 Addenda and later.

(ii) Relief requested under paragraph (g)(5)(iii) of this section and granted under paragraph (g)(6)(i) of this section.

(iii) The augmented inspection program described in paragraph (g)(6) of this section.

(iv) Alternatives authorized under paragraph (z) of this section.

(5) *Inservice examination and testing (IST) program,* for the purposes of this section, means the requirements for preservice and inservice examination and testing of pumps, valves, and dynamic restraints within the scope of this section to assess their operational readiness in nuclear power plants, including but not limited to:

(i) The requirements specified in the ASME OM Code, as incorporated by reference in this section, such as for test or examination, responsibilities, methods, intervals, parameters to be measured and evaluated, criteria for evaluating the results, corrective action, personnel qualification, and recordkeeping.

(ii) Relief requested under paragraph (f)(5)(iii) of this section and granted under paragraph (f)(6)(i) of this section.

(iii) Augmented IST requirements as applied by the Commission under paragraph (f)(6)(ii) of this section.

(iv) Alternatives authorized under paragraph (z) of this section.

(6) *Inspection interval,* as used in this section, means the inservice inspection interval described by the licensee's code of record (Article IWA–2432 of ASME BPV Code, Section XI, 1989 Edition with 1991 Addenda through the 2008 Addenda, or Article IWA–2431 of ASME BPV Code, Section XI, 2009 Addenda and later).

* * * * *

■ 3. In section III of option A of appendix J to part 50, remove and reserve footnote 2 and revise paragraph D.1.(a) to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

Option A—Prescriptive Requirements

* * * * *

III. * * *

D. * * *

1. * * *

(a) After the preoperational leakage rate tests, a set of three Type A tests shall be performed, at approximately equal intervals during each inspection interval, as defined in § 50.55a(y). The third test of each set shall be conducted when the plant is shutdown for the final plant inservice inspections of the inspection interval.

* * * * *

Dated: February 17, 2023.

For the Nuclear Regulatory Commission.

Michael F. King,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–03742 Filed 3–3–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2023–0028]

Draft Regulatory Guide: Sizing of Large Lead-Acid Storage Batteries

AGENCY: Nuclear Regulatory Commission

ACTION: Proposed guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–1418, ''Sizing of Large Lead-Acid Storage Batteries.'' This DG is proposed

Revision 2 of Regulatory Guide (RG) 1.212 of the same name. DG–1418 describes an approach that is acceptable to the NRC staff to meet regulatory requirements for sizing of large lead-acid storage batteries for production and utilization facilities. It endorses, with clarifications, the Institute of Electrical and Electronic Engineers (IEEE) Standard 485–2020, ''IEEE Recommended Practice for Sizing Lead-Acid Batteries for Stationary Applications.''

DATES: Submit comments by April 5, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0028. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Nuclear Regulatory Research, telephone: 301–415–3781, email: *Solomon.Sahle@nrc.gov* and Liliana Ramadan, Office of Nuclear Reactor Regulation, telephone: 301–415–2463, email: *Liliana.Ramadan@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0028 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0028.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0028 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comments into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Sizing of Large Lead-Acid Storage Batteries,'' is temporarily identified by its task number, DG–1418 (ADAMS Accession No. ML22307A132).

DG–1418 is proposed Revision 2 to RG 1.212 and it endorses, with some limitations and a clarification, IEEE Standard (Std.) 485–2020, and includes production and utilization facilities licensed under parts 50 and 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The previous version of this RG endorsed, with certain clarifications, IEEE Std. 485–2010. In 2020, the IEEE revised IEEE Std. 485 to refine the methods for defining direct current (dc) load guidance and sizing large lead acid batteries to ensure consistent performance. The revised IEEE standard provides a succinct document for the sizing of batteries with informative annexes. The NRC staff determined that, based on the revised IEEE standard, a revision to this RG is needed to support applications for new reactor licenses, design certifications, and license amendments.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML22307A144). The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–1418, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants''; or constitute forward

fitting as defined in MD 8.4, because, as explained in this DG, licensees would not be required to comply with the positions set forth in this DG.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 28, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–04460 Filed 3–3–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0328; Airspace Docket No. 22–ASO–37]

RIN 2120–AA66

Revocation, Amendment, and Establishment of Air Traffic Service (ATS) Routes Due to the Decommissioning of the Greene County, MS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Jet Route J–590, amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–11 and V–70, and establish Area Navigation (RNAV) route T–365. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Greene County, MS (GCV), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Greene County VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before April 20, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0328 and Airspace Docket No. 22–ASO–37 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Jet Routes are published in paragraph 2004, VOR Federal airways are published in paragraph 6010(a), and United States Area Navigation Routes

(T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the VOR portion of the Greene County, MS (GCV), VORTAC in October 2023. The Greene County VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Greene County VORTAC is planned for decommissioning, the co-located Tactical Air Navigation (TACAN) is being retained to provide navigational service for military operations and Distance Measuring Equipment (DME) service in support of current and future RNAV procedures.

The ATS routes affected by the Greene County VOR decommissioning are Jet Route J–590 and VOR Federal airways V–11 and V–70. The remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of J–590, V–11, or V–70 within the affected area. As such, the FAA proposes to remove J–590. The FAA also proposes to remove portions of V–11 and V–70, as the planned decommissioning of the Greene County VOR would create gaps in those airways.

To address the removal of Jet Route J–590, instrument flight rules (IFR) traffic could use adjacent Jet Routes J–2, J–37, J–50, and J–138 or receive air traffic control (ATC) radar vectors to fly through or around the affected area. Aircraft equipped with RNAV capabilities could also use RNAV routes Q–22, Q–24, and Q–56 or file point to point through the affected area using the fixes and waypoints (WP) that will remain in place.

To address impacts from the loss of portions of V–11 and V–70, IFR traffic could use adjacent VOR Federal airways V–114, V–222, and V–552, or receive ATC radar vectors to fly through or around the affected area. Aircraft equipped with RNAV capabilities could also use RNAV routes T–292 and T–406 or the new T–365 proposed to be established in this action, or file point to point through the affected area using the fixes and WPs that will remain in place. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

In addition, the FAA proposes to establish a new RNAV route, T–365, to overlap the V–11 airway segments proposed to be removed. This new RNAV route would not only provide an additional mitigation to the proposed modification to V–11, but also support the FAA's NextGen efforts to modernize the NAS navigation system from ground-based to satellite-based.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by removing Jet Route J–590, amending VOR Federal airways V–11 and V–70, and establishing RNAV route T–365 due to the planned decommissioning of the VOR portion of the Greene County, MS, VORTAC. The proposed ATS route actions are described below.

J–590: J–590 currently extends between the Lake Charles, LA, VORTAC and the Montgomery, AL, VORTAC. The FAA proposes to remove the Jet Route segment overlying the Greene County VORTAC between the Fighting Tiger, LA, VORTAC and the Montgomery VORTAC due to the Greene County VOR being decommissioned. Additionally, the FAA proposes to remove the Jet Route segment between the Lake Charles VORTAC and the Fighting Tiger VORTAC as it overlays the same Jet Route segment as J–2 and J–138, and RNAV route segment as Q–24. As a result, the Jet Route would be removed in its entirety.

V–11: V–11 currently extends between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC; and between the Cunningham, KY, VOR/Distance Measuring Equipment (VOR/DME) and the intersection of the Fort Wayne, IN, VORTAC 038° and Flag City, OH, VORTAC 308° radials (the EDGEE fix). The FAA proposes to remove the airway segment overlying the Greene County VORTAC between the Brookley VORTAC and the Magnolia VORTAC. As amended, the airway would extend between the Cunningham VOR/DME and the intersection of the Fort Wayne VORTAC 038° and Flag City VORTAC 308° radials (the EDGEE fix).

V–70: V–70 currently extends between the Monterrey, Mexico, VOR/DME and the Allendale, SC, VOR; and between the Grand Strand, SC, VORTAC and the Cofield, NC, VORTAC. The portions of V–70 within Mexico are excluded from this proposal. The FAA proposes to remove the airway segment overlying the Greene County VORTAC between the Picayune, MS, VOR/DME and the Monroeville, AL, VORTAC. As amended, the airway would extend between the Monterrey, Mexico, VOR/DME and the Picayune VOR/DME, between the Monroeville VORTAC and the Allendale VOR, and between the Grand Strand VORTAC and the Cofield VORTAC. If implemented as proposed, the portions of V–70 within Mexico would continue to be excluded.

T–365: T–365 is a new RNAV route that would extend between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC. This T-route would mitigate the loss of the V–11 airway segment proposed to be removed and provide RNAV routing capability from the Mobile, AL, area northwestward to the Jackson, MS, area.

All NAVAID radials in the VOR Federal airway descriptions below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–590 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–11 [Amended]

From Cunningham, KY; Pocket City, IN; Brickyard, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Flag City, OH, 308° radials.

* * * * *

V–70 [Amended]

From Monterrey, Mexico; Brownsville, TX; INT Brownsville 338° and Corpus Christi, TX, 193° radials; 34 miles standard width, 37 miles 7 miles wide (4 miles E and 3 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; Palacios; Scholes, TX; Sabine Pass, TX; Lake Charles, LA; Lafayette, LA; Fighting Tiger, LA; to Picayune, MS. From Monroeville, AL; INT Monroeville 073° and Eufaula, AL, 258° radials; Eufaula; Vienna, GA; to Allendale, SC. From Grand Strand, SC; Wilmington, NC; Kinston, NC; INT Kinston 050° and Cofield, NC, 186° radials; to Cofield. The airspace within Mexico is excluded.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–365 Brookley, AL (BFM) to Magnolia, MS (MHZ) [New]

Brookley, AL (BFM)	VORTAC	(Lat. 30°36′45.80″ N, long. 088°03′19.78″ W)
GARTS, MS	WP	(Lat. 31°05′52.39″ N, long. 088°29′10.68″ W)
Magnolia, MS (MHZ)	VORTAC	(Lat. 32°26′02.65″ N, long. 090°05′59.18″ W)

* * * * *

Issued in Washington, DC, on February 27, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–04372 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0189; Airspace Docket No. 23–ASO–02]

RIN 2120–AA66

Amendment of Class E Airspace; Shelbyville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Bomar Field/Shelbyville Municipal Airport, Shelbyville, Tennessee, as an airspace evaluation determined an update for this airport necessary. This action would also update this airport's geographic coordinates, as well as the geographic coordinates of Ellington Airport. In addition, this action would remove the Shelbyville VOR/DME from the description and update the description header.

DATES: Comments must be received on or before April 20, 2023.

ADDRESSES: Send comments on this proposal to: the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; Telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2023–0189; Airspace Docket No. 23–ASO–02 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Shelbyville, TN. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2023–0189; Airspace Docket No. 23–ASO–02) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0189; Airspace Docket No. 23–ASO–02.'' The postcard will be dated/time-stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Bomar Field/Shelbyville Municipal Airport, Shelbyville, Tennessee, as an airspace evaluation determined an update for this airport necessary. This action would also update this airport's geographic coordinates, as well as the geographic coordinates of Ellington Airport. In addition, this action would remove the Shelbyville VOR/DME from the description, as it is not necessary to describe the airspace. Finally, the descriptor header would be updated by removing the city name from the from the airport's line. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Shelbyville, TN

Bomar Field-Shelbyville Municipal Airport, TN
(Lat. 35°33′34″ N, long. 86°26′33″ W)
Ellington Airport, Lewisburg, TN
(Lat. 35°30′25″ N, long. 86°48′14″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Bomar Field-Shelbyville Municipal and within 4 miles each side of the 195° bearing from the airport, extending from the 9-mile radius to 14.5-miles south of the airport, and within 4 miles each side of the 359° bearing from the airport, extending from the 9-mile radius to 12-miles north of the airport.

Issued in College Park, Georgia, on February 27, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–04373 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0138; Airspace Docket No. 22–ASO–20]

RIN 2120–AA66

Establishment of Class E Airspace; Calvert, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface

for Kentucky Dam State Park Airport, Calvert City, KY, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport.

DATES: Comments must be received on or before April 20, 2023.

ADDRESSES: Send comments on this proposal to: the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; Telephone: (800) 647–5527, or (202) 366–9826. You must identify Docket No. FAA–2023–0138; Airspace Docket No. 22–ASO–20 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish airspace in Culvert, KY, to support IFR operations in the area.

Comments Invited

Interested parties are invited to participate on this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2023–0138; Airspace Docket No. 22–ASO–20) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2023–0138; Airspace Docket No. 22–ASO–20.'' The postcard will be dated/time-stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be change in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet above the surface for Kentucky Dam State Park Airport, Calvert City, KY, to accommodate RNAV GPS standard instrument approach procedures (SIAPs) serving this airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Culvert, KY [Established]

Kentucky Dam State Park Airport, KY
(Lat 37°00′35″ N, long. 88°17′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kentucky Dam State Park Airport and within 4 miles on each side of the 098° bearing from the airport extending from the 6.5-mile radius to 9.2 miles east of the airport.

Issued in College Park, Georgia, on February 16, 2023

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–04425 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0456; Airspace Docket No. 23–ASW–3]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes T–469 and T–472; Southwest United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Area Navigation (RNAV) routes T–469 and T–472 in the southwest United States. The new RNAV routes would expand the availability of the enroute structure and provide additional RNAV routing within the National Airspace System (NAS) in support of transitioning it from ground-based to satellite-based navigation.

DATES: Comments must be received on or before April 20, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0456 and Airspace Docket No. 23–ASW–3 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the enroute structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address,

phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen efforts to improve the safety and efficiency of the NAS as well as transition the NAS from a ground-based to a satellite-based Performance Based Navigation (PBN) system, the FAA is proposing to establish RNAV routes T–469 and T–472 to provide additional enroute structure within the NAS. This action would reduce air traffic control (ATC) sector workload and complexity, reduce pilot-to-controller communications, and increase NAS capacity and efficiency in the areas of the new RNAV T-routes.

Additionally, the proposed T-routes would provide Instrument Flight Rules (IFR) pilots that are equipped for RNAV additional Air Traffic Service (ATS) route options for navigating around areas of heavy aviation activity and limited or no radar coverage between the Paris, TX, area and the Page, OK, and the Hot Springs, AR, areas. Visual Flight Rules (VFR) pilots, equipped with RNAV capabilities, who elect to navigate via ATS routes, could also take advantage of the proposed T–469 and T–472.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV routes T–469 and T–472. The proposed new RNAV routes are described below.

T–469: T–469 is a new RNAV route that would extend between the TASEY, TX, waypoint (WP) located 60 feet west of the Paris, TX, Very High Frequency (VHF) Omnidirectional Range (VOR)/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID) and the Rich Mountain, OK, VOR/Tactical Air Navigation (VORTAC) NAVAID. This new T-route would provide RNAV routing along the same route of flight as VOR Federal airway V–315 and enhance flight safety and NAS efficiency for aircraft transiting enroute along the eastern boundary of the Rivers Military Operations Area (MOA).

T–472: T–472 is a new RNAV route that would extend between the TASEY, TX, WP located 60 feet west of the Paris, TX, VOR/DME NAVAID and the Hot Springs, AR, VOR/DME NAVAID. This new T-route would provide RNAV routing along the same route of flight as VOR Federal airway V–124 and enhance flight safety and NAS efficiency for aircraft transiting enroute along the southern boundary of the Hog B MOA.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–469 TASEY, TX to Rich Mountain, OK (PGO) [New]

TASEY, TX	WP	(Lat. 33°32′32.56″ N, long. 095°26′54.55″ W)
Rich Mountain, OK (PGO)	VORTAC	(Lat. 34°40′49.67″ N, long. 094°36′32.41″ W)

* * * * * * *

T–472 TASEY, TX to Hot Springs, AR (HOT) [New]

TASEY, TX	WP	(Lat. 33°32′32.56″ N, long. 095°26′54.55″ W)
Hot Springs, AR (HOT)	VOR/DME	(Lat. 34°28′42.94″ N, long. 093°05′26.20″ W)

Issued in Washington, DC, on February 27, 2023.

Brian Konie,

Manager, Airspace Rules and Regulations.

[FR Doc. 2023–04371 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0443; Airspace Docket No. 22–AGL–21]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Sandusky, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Sandusky, MI. The FAA is proposing this action to support new public instrument procedures.

DATES: Comments must be received on or before April 20, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0443 and Airspace Docket No 22–AGL–21 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy*.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Sandusky City Airport, Sandusky, MI, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Sandusky City Airport, Sandusky, MI.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Sandusky, MI [Establish]

Sandusky City Airport, MI
(Lat. 43°27′21″ N, long. 82°50′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sandusky City Airport.

Issued in Fort Worth, Texas, on February 27, 2023.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–04394 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2023–0073]

RIN 1625–AA00

Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish 13 temporary 500-meter safety zones around the construction of 12 wind turbine generators (WTGs) and one offshore substation (OSS) located in the South Fork Wind Farm (SFWF) project area within federal waters on the Outer Continental Shelf (OCS), specifically in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS–A 0517, approximately 16 nautical miles (NM) southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York. This action is necessary to provide for the safety of life, property, and the environment during the planned construction of each facility's monopile type foundation and subsequent installation of the WTGs turbines and OSS platform from May 1, 2023, to December 31, 2023. When enforced, only attending vessels and those vessels specifically authorized by the First Coast Guard District Commander, or a designated representative, are permitted to enter or remain in the safety zones. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 5, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0073 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Craig Lapiejko, Waterways Management, at Coast Guard First District, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
DD Degrees Decimal
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
OSS Offshore Substation
NAD 83 North American Datum of 1983
NM Nautical Mile
§ Section
SFWF South Fork Wind Farm
U.S.C. United States Code
WTG Wind Turbine Generator

II. Background, Purpose, and Legal Basis

On October 20, 2022, Orsted Offshore North America, an offshore wind farm developer, notified the Coast Guard that they plan to begin construction of facilities in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS–A 0517, approximately 16 NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York in May 2023.

The extremely complex offshore construction of these OCS facilities presents many unusually hazardous conditions including hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, potential falling debris, increased vessel traffic, and stationary barges in close proximity to the facilities and each other.

Based on these circumstances, the First Coast Guard District Commander has determined that establishment of 13 safety zones through rulemaking is warranted to ensure the safety of life,

property, and the environment within a 500-meter radius of each of the 13 facilities during their construction.

The Coast Guard is proposing this rule under the authority provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. As an implementing regulation of this authority, 33 CFR part 147 permits the establishment of safety zones for non-mineral energy resource permanent or temporary structures located on the OCS for the purpose of protecting life and property on the facilities, appurtenances and attending vessels, and on the adjacent waters within the safety zone (see 33 CFR 147.10). Accordingly, a safety zone established under 33 CFR part 147 may also include provisions to restrict, prevent, or control certain activities, including access by vessels or persons to maintain safety of life, property, and the environment.

III. Discussion of Proposed Rule

The District Commander is proposing to establish 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS on the OCS from May 1, 2023, through 11:59 p.m. on December 31, 2023.

The construction of these facilities is expected to take place in two phases beginning with the installation of monopile type foundations for 12 WTGs and one OSS starting May 1, 2023. The second phase, which will involve the installation of WTG structures and the OSS platform, is anticipated to begin in August 2023. Commission and operation of the turbines is expected by the end of 2023. The 13 temporary safety zones would be enforced individually as construction progresses from one structure location to the next throughout each of the two phases for a period lasting approximately 48 hours. The Coast Guard would make notice of each enforcement period via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency or hazardous condition. The Coast Guard is publishing this rulemaking to be effective, and enforceable, through December 31, 2023, to encompass any construction delays due to weather or other unforeseen circumstances. If the project is completed before December 31, 2023, enforcement of the safety zones would be suspended, and notice given via Local Notice to Mariners.

Additional information about the construction process of the SFWF can be found at *https://www.boem.gov/renewable-energy/state-activities/south-fork.*

The 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS are in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS–A 0517, approximately 16 NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York.

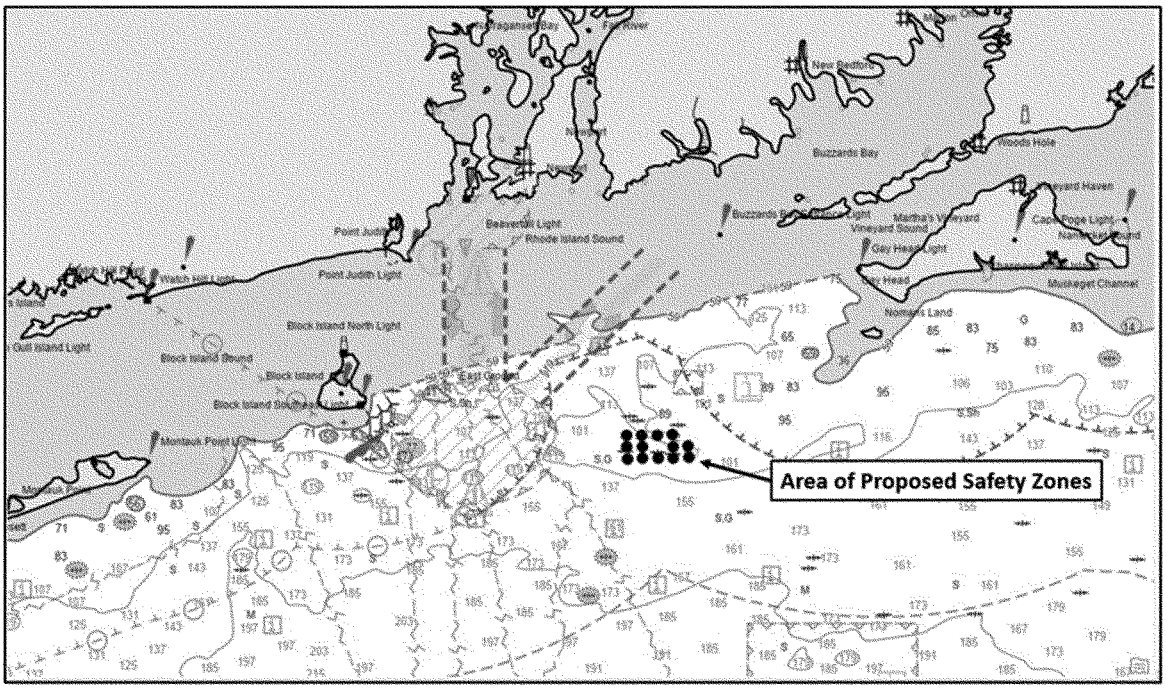
The positions of each individual safety zone proposed by this rulemaking will be referred to using a unique alpha-numeric naming convention outlined in the ''Rhode Island and Massachusetts Structure Labeling Plot (West)''.[1]

Aligning with authorities under 33 CFR 147.15, the proposed safety zones would include the area within 500-meters of the center point of the positions provided in the table below expressed in Decimal Degrees (DD) based on North American Datum 1983 (NAD 83).

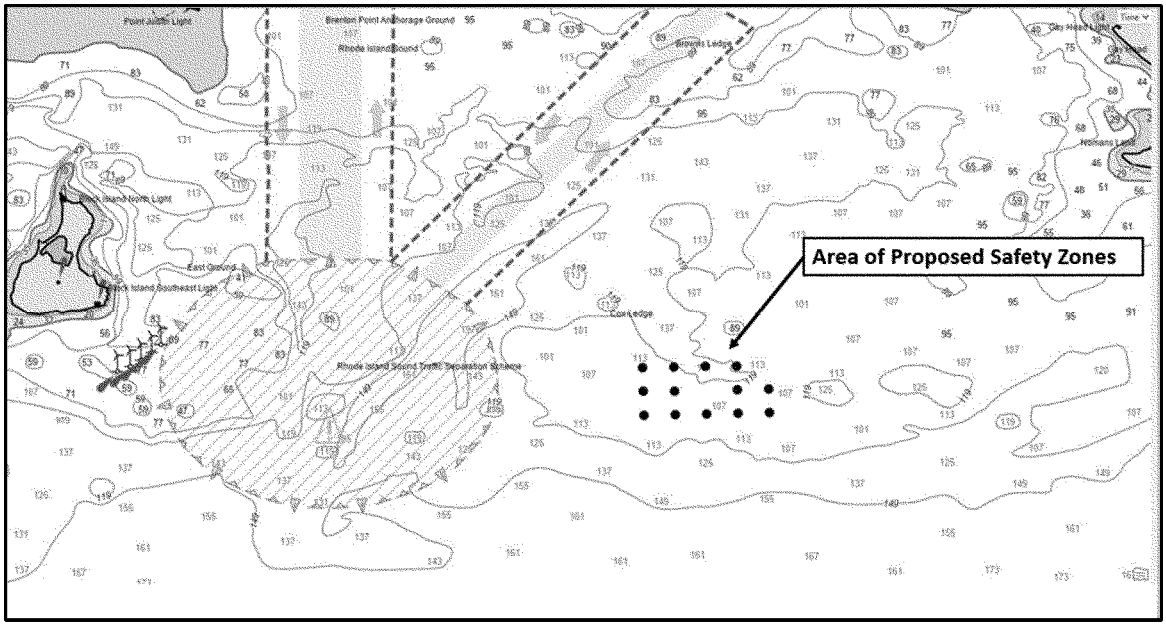
Name	Facility type	Latitude	Longitude
AM06	WTG	N 41.10921219	W −71.16906236
AM07	WTG	N 41.10962524	W −71.14702052
AM08	WTG	N 41.11003408	W −71.12497822
AM09	WTG	N 41.1104387	W −71.10293547
AN06	WTG	N 41.0925412	W −71.16851369
AN07	WTG	N 41.09295401	W −71.14647741
AN09	WTG	N 41.093767	W −71.1024035
AN10	WTG	N 41.09416717	W −71.08036587
AP06	OSS	N 41.07587016	W −71.16796548
AP07	WTG	N 41.07628273	W −71.14593476
AP08	WTG	N 41.07669109	W −71.12390359
AP09	WTG	N 41.07709524	W −71.10187197
AP10	WTG	N 41.07749518	W −71.0798399

[1] The Rhode Island and Massachusetts Structure Labeling Plot (West) is an attachment to the Conditions of Construction and Operations Plan Approval Lease Number OCS–A 0517 (*boem.gov*) and can be found at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF-COP-Terms-and-Conditions.pdf.*

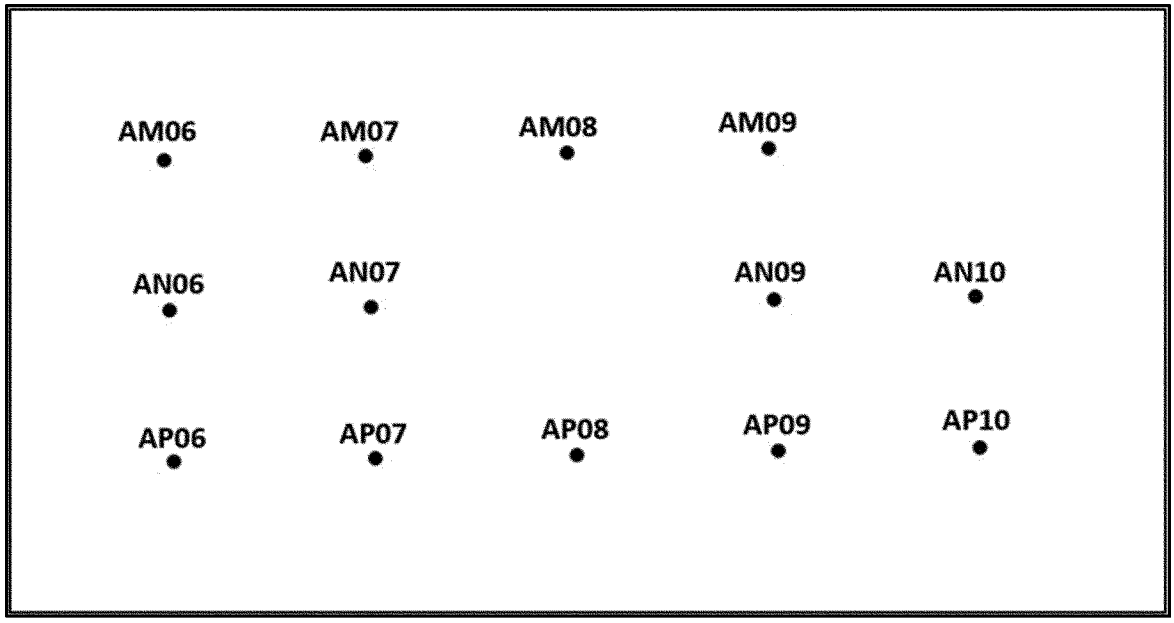
The positions of the 13 proposed safety zones are shown on the chartlets below. For scaling purposes, there is approximately one NM spacing between each position.



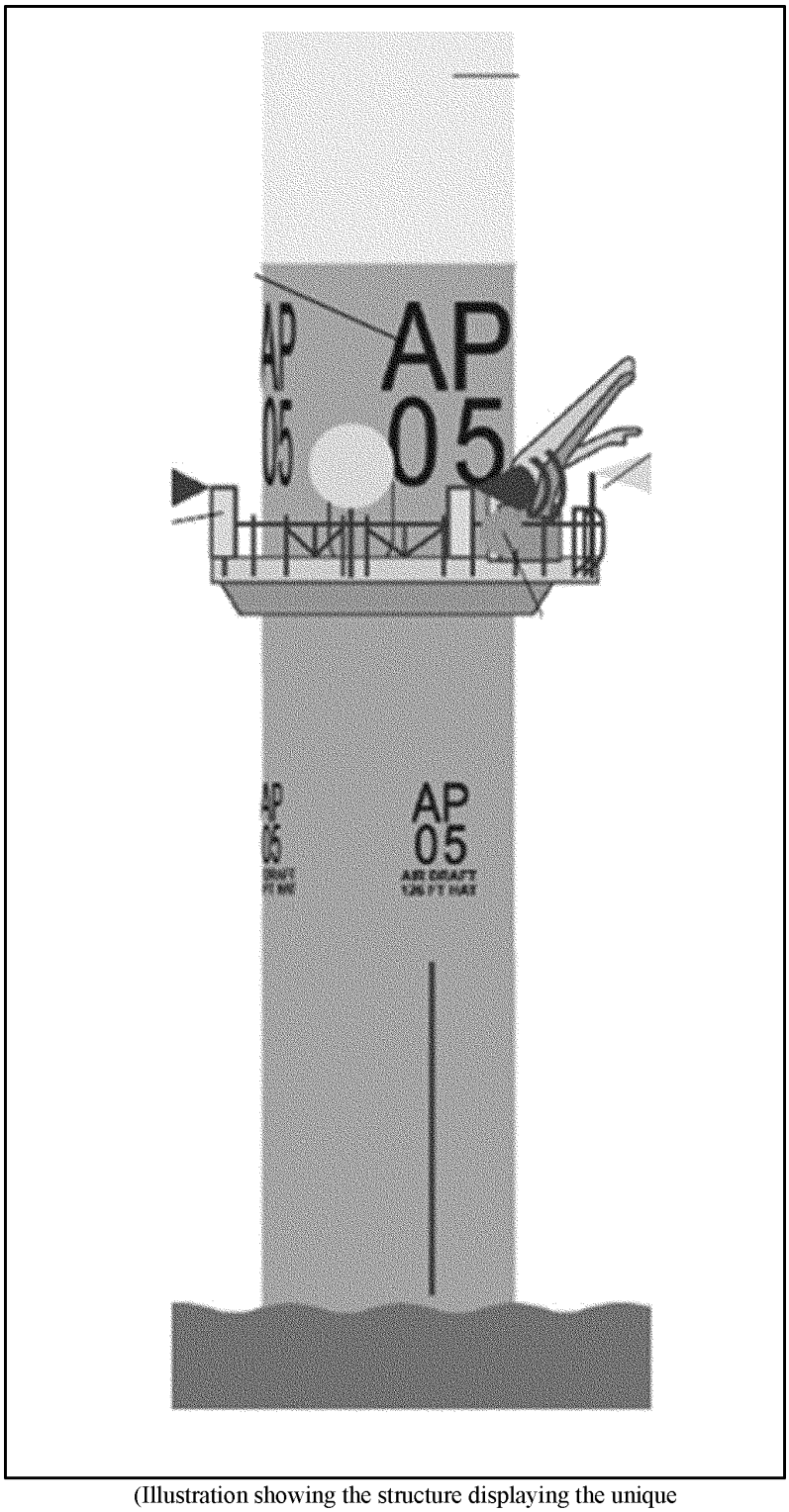
(Small scale chartlet showing the positions of the proposed safety zones.)



(Large scale chartlet showing the positions of the proposed safety zones.)



(Chartlet showing turbine positions using unique alpha-numeric naming convention.)



(Illustration showing the structure displaying the unique alpha-numeric identification naming convention.)

BILLING CODE 9110–04–C

Navigation in the vicinity of the proposed safety zones consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows, and recreational vessels.

When enforced, no unauthorized vessel or person would be permitted to enter the safety zone without obtaining permission from the First Coast Guard District Commander or a designated representative. Requests for entry into the safety zone would be considered and reviewed on a case-by-case basis. Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 617–223–8555 (First Coast Guard District Command Center). If permission is granted, all persons and vessels shall comply with the instructions of the First Coast Guard

District Commander or designated representative.

The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

Aligning with 33 CFR 147.15, the safety zones established would extend to a maximum distance of 500-meters around the OCS facility measured from its center point. Vessel traffic would be able to safely transit around the proposed safety zones, which would impact a small, designated area in the Atlantic Ocean, without significant impediment to their voyage. This safety zone would provide for the safety of life, property, and the environment during the construction of each structure, in accordance with Coast Guard maritime safety missions.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect owners or operators of vessels intending to transit or anchor in the SFWF, some of which might be small entities. However, these safety zones would not have a significant economic impact on a substantial number of these entities because they are temporarily enforced, allow for deviation requests, and do not impact vessel transit significantly. Regarding the enforcement period, although these safety zones would be in effect from May 1, 2023, through December 31, 2023, vessels would only be prohibited from the regulated zone during periods of actual construction activity in correspondence to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next throughout each of the two phases. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely will cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels would also be able to request deviation from this rule to transit through a safety zone. Such requests would be considered on a case by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone around these OCS facilities to be minimal and have no significant economic impact on small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket.

For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0073 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 147.T01–0073 to read as follows:

§ 147.T01–0073 Safety Zones; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0517, Offshore Rhode Island, Atlantic Ocean.

(a) *Description.* The area within 500-meters of the center point of the positions provided in the table below is a safety zone:

Name	Facility type	Latitude	Longitude
AM06	WTG	N 41.10921219	W −71.16906236
AM07	WTG	N 41.10962524	W −71.14702052
AM08	WTG	N 41.11003408	W −71.12497822
AM09	WTG	N 41.1104387	W −71.10293547
AN06	WTG	N 41.0925412	W −71.16851369
AN07	WTG	N 41.09295401	W −71.14647741
AN09	WTG	N 41.093767	W −71.1024035
AN10	WTG	N 41.09416717	W −71.08036587
AP06	OSS	N 41.07587016	W −71.16796548
AP07	WTG	N 41.07628273	W −71.14593476
AP08	WTG	N 41.07669109	W −71.12390359
AP09	WTG	N 41.07709524	W −71.10187197
AP10	WTG	N 41.07749518	W −71.0798399

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones.

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel as defined in 33 CFR 147.20;

(2) A vessel authorized by the First Coast Guard District Commander or a designated representative.

(d) *Request for Permission.* Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the First Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 617–223–8555 (First Coast Guard District Command Center).

(e) *Effective and enforcement periods.* This section will be effective from May 1, 2023, through 11:59 p.m. on December 31, 2023. But it will only be enforced during active construction or other instances which may cause a hazard to navigation deemed necessary by the First Coast Guard District Commander. The First Coast Guard District Commander will make notification of the exact dates and times in advance of each enforcement period for the locations above in paragraph (a) of this section to the local maritime community through the Local Notice to Mariners and will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners

can be found at: *https://www.navcen.uscg.gov.*

Dated: February 27, 2023.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2023–04306 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3010, 3035, 3040

[Docket No. RM2023–5; Order No. 6446]

RIN 3211–AA34

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Commission initiates this advanced notice of proposed rulemaking to consider codifying regulations pertaining to the addition of Competitive negotiated service agreements to the Competitive product list. The Commission invites public comment.

DATES: *Comments are due:* March 31, 2023. *Reply comments are due:* April 10, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The current procedures and standards for adding Negotiated Service Agreements (NSAs) to the Competitive product list have been addressed substantially through separate orders issued by the Commission in various dockets since 2008. Streamlining and codifying the rules pertaining to Competitive NSAs will provide increased clarity concerning filing requirements and the review process. Codifying such procedures and standards also provides an opportunity to make improvements to the practices and precedents that have developed, while maintaining the opportunities for pricing flexibility that NSAs afford the Postal Service. Thus, the Commission seeks comments to facilitate the development of such rules.

The Commission has developed a conceptual framework (Framework) that could outline enhancements to its regime for adding NSAs to the Competitive product list. The core feature of the Framework is the creation of a three-track system to review NSAs proposed to be added to the Competitive product list. A proposed NSA would be filed in one of three tracks, and each track would have distinct filing and review procedures providing different levels of scrutiny and streamlined review. The tracks would consist of a Standard NSA track, a Custom NSA track, and a non-published rates (NPR) NSA track. The intent is to preserve the Postal Service's existing contracting flexibility in the Custom NSA track, while providing for streamlined pre-implementation review for contracts that satisfy the eligibility requirements of the NPR NSA track or the Standard NSA track.

The Framework provides new filing and review procedures for the Standard NSA track. These procedures would include pre-approving financial models to streamline review of individual NSAs that reflect only existing Postal Service offerings. By contrast, filing and review procedures for NPR NSAs would generally follow current practices. Filing and review procedures under the Custom NSA track would resemble current, generally applicable filing and review practices for non-NPR NSAs.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–04473 Filed 3–3–23; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0480; FRL–10676–01–R6]

Air Plan Approval; Texas; New Source Review Updates for Project Emissions Accounting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of a revision to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021. The revision includes updates to the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to incorporate recent Federal New Source Review (NSR) regulations for Project Emissions Accounting (PEA).

DATES: Written comments must be received on or before April 5, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0480, at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section (ARPE), 214–665–2115, *wiley.adina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state's air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 through 51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. As the EPA updates its implementing rules for NSR, states and localities similarly are required to update their SIP-approved rules to ensure consistency with the minimum Federal NSR permitting requirements.

On November 24, 2020, the EPA promulgated final revisions to the applicability regulations of the major NSR permit programs. A two-step applicability test is used in the PSD and NNSR programs to determine whether a proposed project will be subject to major NSR requirements. In Step 1 of the analysis, the applicant determines if the proposed project would result in a significant emissions increase of a regulated NSR pollutant. If there is a significant emissions increase, the applicant proceeds to Step 2 and determines if there is a significant net emissions increase. In the November 24, 2020, final rule, the EPA clarified that emissions increases *and* decreases associated with the proposed project could be used in Step 1 of the applicability test; this is known as project emissions accounting (PEA). The clarifications made to the PSD and NNSR programs are not required elements of the Federal program. States with SIP-approved PSD and NNSR programs that want to use PEA in PSD and NNSR applicability tests must either determine that the state is able to interpret the existing state rules such that PEA is already allowed, or the state must adopt and submit a revision to the SIP that is consistent with the PEA revisions.

On July 9, 2021, the TCEQ submitted revisions to the Texas SIP that update the Texas PSD and NNSR programs to allow for PEA consistent with the EPA's November 24, 2020, final rule at 85 FR 74890. The July 9, 2021, submittal also included the repeal of obsolete provisions from the Texas permitting program.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Texas SIP which are the subject of this proposed rulemaking. Our analysis indicates that the July 9, 2021, SIP revision was developed in accordance with the CAA and the State provided reasonable notice and public hearing.

A. Evaluation of Revisions to 30 TAC Section 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions

The TCEQ submitted revisions to the definition of ''Project emissions increase'' at 30 TAC Section 116.12(32) to implement the PEA. The revisions are consistent with the EPA's November 24, 2020, final rule at 85 FR 74890. As stated above, the EPA's implementing regulations for NSR establish a two-step process for determining major NSR applicability for projects at stationary sources. Under Step 1 of the applicability determination, the project itself is analyzed to determine if there is a significant emissions increase of the project. In our November 24, 2020, final rule the EPA clarified that this Step 1 analysis may consider the increases and decreases associated with the project. If the Step 1 analysis determines there is a significant emissions increase, then the applicant proceeds to Step 2 of the applicability determination whereby the applicant must perform contemporaneous netting and account for the project emission increases and the emission increases and decreases attributable to other projects at the stationary source within the contemporaneous window to determine if there is a significant net emissions increase. The effect of the revisions to the Texas definition is that for purposes of determining whether a source or modification is major for PSD or NNSR permitting, the Step 1 analysis of the project itself will include increases and decreases associated with the project to determine if the project results in a ''significant emissions increase'', as required under 30 TAC Section 116.12(32)(D). If there is an increase, the second step of the applicability process is to determine if there is a ''significant net emissions increase''. Step 2 of the applicability determination is unchanged by the submitted SIP revision.

B. Evaluation of Revisions to 30 TAC Section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas

The submitted revisions to 30 TAC Section 116.150(c)(1) and (c)(2) are necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of ''project emissions increase'' at 30 TAC Section 116.12(32). The TCEQ also submitted non-substantive edits to 30 TAC Section 116.150(a), (b), and (c) to correct non-substantive, grammar-related provisions.

C. Evaluation of Revisions to 30 TAC Section 116.151—New Major Source or Major Modification in Nonattainment Area Other Than Ozone

The submitted revisions to 30 TAC Section 116.151(b) are necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of ''project emissions increase'' at 30 TAC Section 116.12(32).

D. Evaluation of Revisions to 30 TAC Section 116.160—Prevention of Significant Deterioration

The submitted revisions to 30 TAC Section 116.160(b)(1) and (b)(2) are

necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of ''project emissions increase'' at 30 TAC Section 116.12(32).

III. Proposed Action

Pursuant to section 110 of the Act, we are proposing to approve the submitted revisions to the Texas SIP that update the PSD and NNSR permitting requirements to maintain consistency with the Federal NSR program requirements by adopting the provisions for PEA and repeal obsolete requirements. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy and guidance for permitting SIP requirements. The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions,
- Revisions to 30 TAC Section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas,
- Revisions to 30 TAC Section 116.151—New Major Source or Major Modification in Nonattainment Area Other than Ozone, and
- Revisions to 30 TAC Section 116.160—Prevention of Significant Deterioration.

IV. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.[1] The EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (40.3 percent versus 59.3 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (13.2 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is lower than the national average (1.1 percent versus 1.3 percent). The percent of the population that is Hispanic or Latino is significantly higher than the national average (40.2 percent versus 18.9 percent). The percent of the population that is two or more races is lower than the national averages (2.2 percent versus 2.9 percent). The percent of persons in poverty in Texas is higher than the national average (14.2 percent versus 11.6 percent). The percent of persons aged 25 years and older with a high school diploma in Texas is slightly lower than the national average (84.4 percent versus 88.5 percent), and the percent with a Bachelor's degree or higher is below the national average (30.7 percent versus 32.9 percent).

This action proposes to approve revisions to the Texas PSD and NNSR programs, consistent with the Federal permitting programs. Final approval of these revisions to the Texas permit programs will continue to enable the State of Texas to implement control strategies and permitting programs. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III of this preamble, Proposed Action. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as

[1] See the United States Census Bureau's QuickFacts on Texas at *https://www.census.gov/quickfacts/fact/table/TX,US/PST045221.* This information is also available in the rulemaking docket.

part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–04488 Filed 3–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0279; FRL–10675–01–R6]

Air Plan Approval; Oklahoma; Updates to the State Implementation Plan Incorporation by Reference Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Oklahoma State Implementation Plan (SIP) submitted by the State of Oklahoma designee on December 17, 2021, and January 30, 2023. This action addresses the submittal of revisions to the Oklahoma SIP to update the incorporation by reference provision of Federal requirements under Oklahoma Administrative Code (OAC).

DATES: Written comments must be received on or before April 5, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0279, at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state's air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

On December 17, 2021, Mr. Kenneth Wagner, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual SIP updates for 2021. The submittal included revisions to OAC 252:100, Subchapter 2 and Appendix Q to update the incorporation by reference of Federal requirements, which will be addressed in this proposal.

On January 30, 2023, Mr. Ken McQueen, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual SIP updates for 2022. This submittal included revisions to OAC 252:100, Subchapter 2 and Appendix Q to update the incorporation by reference of Federal requirements, which will be addressed in this proposal. The submittal also included revisions to OAC 252:100, Subchapters 8, 37 and 39 which will be addressed by EPA at a later date and in separate rulemakings.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Oklahoma SIP which are the subject of this proposed rulemaking. Our analysis indicates that the December 17, 2021 and January 30, 2023, SIP revisions addressed in this proposed rulemaking action were developed in accordance with the CAA and the State provided reasonable notice and public hearing.

The ODEQ submitted revisions on December 17, 2021 and January 30, 2023, to update the Incorporation by Reference provisions found in the Oklahoma SIP. In the December 17, 2021, submittal the ODEQ provided amendments to OAC 252:100–2–3 and Appendix Q that were adopted on June 11, 2021, and effective September 15,

2021. The January 30, 2023, submittal included amendments to OAC 252:100–2–3 and Appendix Q that were adopted on June 21, 2022, and effective September 15, 2022. These revisions ensure the Oklahoma SIP maintains consistency with current Federal requirements by updating the opening paragraph of OAC 252:100–2–3 to include the current incorporation by reference date and revoking and replacing the prior version of Appendix Q. Specifically, the ODEQ updated the incorporation by reference requirements of:

- 40 CFR part 50, appendices B and J, to ensure the Oklahoma SIP uses the current Federal reference methods for determining compliance with the NAAQS,
- 40 CFR part 51, subpart A, table 1 to appendix A to use current requirements in the Oklahoma emission inventory reporting requirements,
- 40 CFR part 51, paragraph 51.100(s)(1) of subpart F, to use the Federal definition of volatile organic compound,
- 40 CFR part 51, appendix P, to use Federal emission monitoring requirements,
- 40 CFR part 51, appendix W, to use current Federal guidance on air quality models, and
- 40 CFR part 98, table A–1 of subpart A, to use current global warming potentials in the Oklahoma air permitting programs.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt* v. *Oklahoma,* 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014).[1]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

The EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[2] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

The EPA is proposing to approve updates to the Oklahoma SIP incorporation by reference provisions to maintain consistency with Federal requirements, which will apply statewide in Oklahoma. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with the EPA's October 1, 2020, SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands, as described above. Because—per the State's request under SAFETEA—EPA's October 1, 2020, approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.[3]

IV. Proposed Action

We are proposing to approve under section 110 of the CAA, the December 17, 2021, and January 30, 2023, revisions to the Oklahoma SIP to update the incorporation by reference dates for Federal requirements. We have determined that these revisions were developed in accordance with the CAA and the EPA's regulations, policy, and guidance for SIP development.

The EPA proposes approval of the following revisions to the Oklahoma SIP adopted on June 11, 2021, effective September 15, 2021, and submitted to the EPA on December 17, 2021:

- Revisions to OAC 252:100–2–3, Incorporation by Reference,
- Repeal of OAC 252:100, Appendix Q, and
- Adoption of new OAC 252:100. Appendix Q.

The EPA proposes approval of the following revisions to the Oklahoma SIP adopted on June 21, 2022, effective September 15, 2022, and submitted to the EPA on January 30, 2023:

- Revisions to OAC 252:100–2–3, Incorporation by Reference,
- Repeal of OAC 252:100, Appendix Q, and
- Adoption of new OAC 252:100. Appendix Q.

V. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of

[1] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[2] EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA*) located in the state. *See, e.g.,* 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

[3] In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and expects to engage in further discussions with tribal governments and the State of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in Federal court. (*Pawnee* v. *Regan,* No. 20–9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA's final action on the approved revisions to the Oklahoma SIP that include revisions to OAC 252:100–2–3 and Appendix Q will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

individual demographic groups of the populations living within Oklahoma.[4] The EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (35 percent versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (7.8 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is significantly higher than the national average (9.4 percent versus 1.3 percent). The percent of the population that is two or more races is higher than the national averages (6.3 percent versus 2.8 percent). The percent of persons in poverty in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of persons aged 25 years and older with a high school diploma in Oklahoma is similar to the national average (88.6 percent versus 88.5 percent), while the percent with a Bachelor's degree or higher is below the national average (26.1 percent versus 32.9 percent).

This action proposes to approve revisions to the Oklahoma SIP to update the incorporation by reference provisions to maintain consistency with Federal requirements; thus, enabling the State of Oklahoma to implement control strategies and permitting programs. We expect that this action, if finalized, will generally achieve emissions reductions and contribute to reduced environmental and health impacts on all populations in Oklahoma, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations that update Oklahoma's incorporation by reference of certain Federal regulations in 40 CFR parts 50, 51, and 98 identified and discussed in Section II, The EPA's Evaluation, and Section IV, Proposed Action, of this preamble. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This proposed approval of revisions to the Oklahoma SIP that update the incorporation by reference dates for Federal requirements as discussed more fully elsewhere in this document will apply, if finalized as proposed, to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9,

[4] See the United States Census Bureau's QuickFacts on Oklahoma at *https://www.census.gov/quickfacts/fact/table/OK,US/PST045221.*

2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has engaged with tribal governments that may be affected by this action and provided information about this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–04487 Filed 3–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1090

[EPA–HQ–OAR–2022–0513; FRL–9845–01–OAR]

RIN 2060–AV73

Request From States for Removal of Gasoline Volatility Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to provisions specified by the Clean Air Act (CAA), governors of eight states submitted petitions requesting that EPA remove the 1-pound per square inch (psi) Reid vapor pressure (RVP) waiver for summer gasoline-ethanol blended fuels containing 10 percent ethanol (E10). This action acts on those requests from the Governors of Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin by proposing to remove the 1-psi waiver. EPA also received multiple petitions from stakeholders requesting an extension of the effective date to the summer of 2024. This action proposes to delay the effective date for one year consistent with statutory provisions. Thus, we propose an effective date for all states of April 28, 2024. This action also proposes a regulatory process by which a state may request to reinstate the 1-psi waiver.

DATES: *Comments:* Comments must be received on or before April 20, 2023.

Public hearing: EPA will hold a virtual public hearing on March 21, 2023. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: *Comments.* You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0513, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method) Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0513 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Public hearing. The virtual public hearing will be held on March 21, 2023. The hearing will begin at 9:00 a.m. Eastern Daylight Time (EDT) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing by March 16, 2023. Information on how to register can be found at *https://www.epa.gov/gasoline-standards.* Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Lauren Michaels, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4640; email address: *michaels.lauren@epa.gov.* For questions regarding the public hearing, contact Nick Parsons at *RFS-Hearing@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel. Potentially affected categories include:

Category	NAICS [1] code	Examples of potentially affected entities
Industry	211130	Natural gas liquids extraction and fractionation.
Industry	221210	Natural gas production and distribution.
Industry	324110	Petroleum refineries (including importers).
Industry	325110	Butane and pentane manufacturers.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Manufacturers of gasoline additives.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products wholesalers.
Industry	447110, 447190	Fuel retailers.
Industry	454310	Other fuel dealers.
Industry	486910	Natural gas liquids pipelines, refined petroleum products pipelines.
Industry	493190	Other warehousing and storage—bulk petroleum storage.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 1090. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation in Virtual Public Hearing

Information on how to register for the hearing can be found at *https://www.epa.gov/gasoline-standards.* The last day to pre-register to speak at the hearing will be March 16, 2023.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/gasoline-standards.* While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by March 16, 2023. EPA may not be able to arrange accommodations without advance notice.

Outline of this Preamble

I. Executive Summary

In this action, EPA is responding to requests from eight state governors to remove the 1-psi volatility waiver for gasoline-ethanol blends containing 10 percent ethanol beginning with the summer of 2023. The governors made their requests pursuant to CAA section 211(h)(5), which provides that the Administrator shall remove the 1-psi waiver via regulation upon a demonstration by a governor that the 1-psi waiver increases emissions in their state.

After review of the modeling results presented by the governors in their requests, EPA is proposing to remove the 1-psi waiver in the following states: Illinois, Iowa, Nebraska, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin.

We recognize that the initial requests made by the governors of many of the states were submitted in the spring of 2022, such that a summer of 2023 effective date may have been possible, and seek comment on such an effective date. However, we have also received numerous petitions to delay the effective date of this action to at least 2024.[1] After consideration of the petitions, and given current timing considerations, we propose a finding of insufficient supply of gasoline in 2023, and therefore also propose an effective date of April 28, 2024 for removal of the 1-psi waiver in all eight states, as described further in Sections IV and X.

II. Background and History

EPA first took regulatory action to control the volatility of gasoline in 1987.[2] Because higher gasoline volatility leads to higher evaporative emissions, EPA regulates the RVP—a measure of fuel volatility—of gasoline during summer months in order to reduce volatile organic compound (VOC) emissions that contribute to the formation of smog (ground-level ozone).[3] The volatility of fuel depends on refineries' decisions in formulating their gasoline. Subsequent to EPA's actions, Congress enacted the CAA Amendments of 1990, which included statutory volatility provisions for summer gasoline. These provisions largely codified EPA's regulatory approach, including establishing a 9.0 psi RVP standard for gasoline volatility in the summer.[4] Because blending ethanol into gasoline increases the volatility of the resulting fuel due to chemical differences between ethanol and gasoline, Congress also codified a 1-psi volatility waiver for blends of gasoline and 10 percent ethanol (*i.e.,* E10), allowing such blends to have a 1.0-psi higher RVP than otherwise allowed for gasoline, consistent with EPA's prior regulatory approach.[5] This allowance only applies to gasoline-ethanol blends containing between 9 and 10 percent ethanol (E10), and does not extend to gasoline-ethanol blends

[1] We refer to these petitions as ''extension petitions'' throughout this proposal.

[2] See 52 FR 31274 (August 19, 1987); 54 FR 11868 (March 22, 1989); 55 FR 23658 (June 11, 1990).

[3] Gasoline must have volatility in the proper range to prevent driveability, performance, and emissions problems. If the volatility is too low, the gasoline will not ignite properly; if the volatility is too high, the vehicle may experience vapor lock. Importantly for this action, excessively high volatility also leads to increased evaporative emissions from the vehicle. Vehicle evaporative emission control systems are designed and certified on gasoline with a volatility of 9.0 psi RVP. Higher volatility gasoline may overwhelm the vehicle's evaporative control system, leading to a condition described as ''breakthrough'' of the cannister and mostly uncontrolled evaporative emissions.

[4] CAA section 211(h)(1); 42 U.S.C. 7545(h)(1). CAA section 211(h)(1) requires EPA to establish volatility requirements—that is, a restriction on RVP—during the high ozone season. To implement these requirements, EPA defines ''high ozone season'' or ''summer season'' at 40 CFR 1090.80 as ''the period from June 1 through September 15 for retailers and wholesale purchaser consumers, and May 1 through September 15 for all other persons, or an RVP control period specified in a state implementation plan if it is longer.'' In general practice by industry and for purposes of this preamble, the high ozone season is referred to as the ''summer'' or ''summer season'' and gasoline produced to be used during the high ozone season is called ''summer gasoline.'' EPA's regulations do not impose any volatility requirements on any type of blend of gasoline outside of the summer season.

[5] CAA section 211(h)(4); 42 U.S.C. 7545(h)(4).

containing greater than 10 and less than or equal to 15-percent ethanol (E15).[6] The 1-psi waiver also does not apply to reformulated gasoline (RFG).

This volatility waiver, at the time the provision was enacted, applied to a relatively small portion of the gasoline sold in the United States. Today, however, almost all gasoline sold is E10, and thus the 1-psi waiver increases the volatility of most gasoline.

On April 28, 2022, eight governors submitted a petition for the removal of the 1-psi waiver for E10 in their states beginning in the summer of 2023, pursuant to CAA section 211(h)(5). On June 10, 2022, the Governor of Ohio also submitted a petition requesting the removal of the 1-psi waiver in that state.[7] On July 21, 2022, the Governor of Kansas notified EPA that they were rescinding their request for removal of the 1-psi waiver in Kansas.[8] On October 13, 2022, the Governor of North Dakota notified EPA that they were rescinding their request for removal of the 1-psi waiver in North Dakota.[9] On December 21, 2022, the Governor of Missouri submitted a petition requesting the removal of the 1-psi waiver in that state.[10] This notice refers to the eight remaining states as the ''petitioning states.'' The petitions included modeling results indicating reductions in VOCs, nitrogen oxides (NO_X), and carbon monoxide (CO).

III. Statutory Authority and Provisions To Remove the 1-psi Waver

We are conducting a rulemaking to modify EPA's fuel quality regulations in 40 CFR part 1090 to remove the 1-psi waiver for the eight states that have requested it. Specifically, we are proposing to remove the 1-psi waiver that is applicable to fuel blends containing gasoline and 10 percent ethanol in Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin beginning in the summer of 2024.

CAA section 211(h)(5) was enacted as part of the Energy Policy Act of 2005 (EPAct), and provides that:

> Upon notification by the Governor of a State, with supporting documentation, that implementation of the waiver in section [211(h)(4)], would increase emissions that contribute to air pollution in any area of the state, the Administrator shall, by regulation, apply the volatility limit under [section 211(h)(1)].

CAA section 211(h)(1) requires that gasoline volatility not exceed 9.0 psi during the high ozone season, and that nonattainment areas have a lower (*i.e.,* more stringent) RVP standard. Thus, regulatory action under CAA section 211(h)(5) would remove the 1-psi waiver from E10.

Prior to the April 28, 2022 petition, no governor had ever submitted a CAA section 211(h)(5) request to EPA, and thus we are interpreting this statutory provision for the first time in this action. We find that the use of the prescriptive statutory language ''shall'' provides limited if any discretion for EPA to consider other issues such as economic impacts of removing the 1-psi waiver. Such impacts are instead appropriately taken into consideration by a governor when deciding whether to submit a petition to EPA.[11] EPA's role in this case is to evaluate the supporting documentation provided by the governors.[12] If EPA concludes that the supporting documentation, as required by the statute, demonstrates emissions increases with the 1-psi volatility waiver in place, then CAA section 211(h)(5) requires EPA to promulgate regulations to remove the 1-psi waiver.

Additionally, we do not interpret the CAA as requiring a demonstration of a reduction in emissions of *all* pollutants that contribute to air pollution in the requesting states. Such a requirement could not have been contemplated by Congress, as lowering the volatility of fuel would be expected to have differing impacts on different emissions. Congress was silent on what air pollutants EPA should consider in responding to petitions for removal of the 1-psi waiver. Specifically, under CAA section 211(h)(5), EPA is to remove the 1-psi waiver if it ''increase[s] emissions that contribute to air pollution.'' This contrasts with, for example, CAA section 110(a)(2)(D)(i), which prohibits sources in a state from emitting ''any air pollutant which will contribute significantly to nonattainment'' in another state. Air pollution could result from a myriad of sources, including listed hazardous air pollutants, criteria pollutants, and greenhouse gases, and thus would appear to be a rather expansive term. Reducing RVP, however, is a volatility control measure as explained earlier in Section II. CAA section 211(h)(1) requires EPA to set RVP standards to address ''evaporative emissions.'' Additionally, EPA has consistently explained that adding 10 percent ethanol to gasoline causes roughly a 1.0 psi RVP increase in the blend's volatility, which is the premise for the 1-psi waiver contained in CAA section 211(h)(4) and the subject of this action.[13] EPA is of the view, therefore, that it is reasonable to consider ''air pollution'' emanating from such emissions and thus, that it may be more appropriate to evaluate the impact of the 1-psi waiver on VOC emissions.

The U.S. EPA Motor Vehicle Emissions Simulator (MOVES) is an appropriate tool to use to model the emission impacts required by the statute. The MOVES runs performed by the states compared emissions from motor vehicles and nonroad vehicles and equipment with and without the 1-psi waiver for E10 in each state in the summer. Similar analyses have been used to support prior EPA actions in removing federal and state fuel programs in the past.[14]

IV. Petitions for Removal of the 1-psi Waiver and Supporting Documentation

During the fall of 2021, EPA received several letters from states requesting that EPA engage in a dialogue about mechanisms to provide parity between E10 and E15 with respect to gasoline volatility standards.[15] Specifically, the letters referred to CAA section 211(h)(5) and inquired about what type of ''supporting documentation'' should accompany such a request. EPA organized and participated in a series of meetings with representatives from various Midwestern states that had expressed interest in removing the 1-psi waiver, and in those meetings, EPA indicated that MOVES modeling would be an appropriate tool to use for this purpose given its ability to model the emissions impacts of changes in gasoline volatility and given our past

[6] See 40 CFR 1090.215(a), codifying the statutory 1-psi waiver.

[7] These petitions are available in the docket for this action.

[8] ''July 2022 Letter from Governor Laura Kelly,'' available in the docket for this action.

[9] ''October 2022 Letter from Governor Burgum,'' available in the docket for this action.

[10] This petition is also available in the docket for this action.

[11] Considerations like this were cited by the Governors of Kansas and North Dakota in rescinding their requests.

[12] Legislative history suggests that the supporting documentation need not be as stringent as that called for under Section 211(c)(4)(c) of the CAA. See Senate Report 106–426 at 12 (September 28, 2000).

[13] See, *e.g.,* 52 FR 31274 at 31292 (August 19, 1987).

[14] For example, on June 7, 2017, EPA published a final rule to relax the federal 7.8 psi RVP standard in the Nashville, TN area (82 FR 26354) and on March 12, 2021, EPA published two final rules that removed approved regulations from the Kansas and Missouri SIPs that required the sale of 7.0 psi RVP gasoline in the Kansas City, KS–MO area (86 FR 14000 and 86 FR 14007).

[15] See ''Letter from Governor Laura Kelly to Administrator Regan,'' October 13, 2021, and ''Letter from Governors Kim Reynolds, Pete Ricketts, Doug Burgum, Tim Walz, Michael Parson, Kristi Noem, and Tony Evers,'' November 4, 2021, available in the docket for this action.

reliance on MOVES modeling runs in similar contexts.

On April 28, 2022, the Governors of Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin submitted a joint petition to EPA for the removal of the 1-psi waiver for E10 in their respective states. The petition specifically requested the removal of the 1-psi waiver as a permanent solution to provide year-round E15 in those states beginning in the summer of 2023. As accompanying documentation, the petition provided quantified reductions in VOC, NO_X, and CO emissions as a result of removing the 1-psi waiver in each state based on MOVES modeling. Subsequent to this submittal, the Governors of Kansas and North Dakota rescinded their requests to remove the 1-psi waiver for E10 in those states.[16] Therefore, we are not proposing to take any action on the 1-psi waiver in Kansas and North Dakota in this action.

On June 10, 2022, the Governor of Ohio also submitted a petition requesting the removal of the 1-psi waiver for E10 beginning in the summer of 2023. The petition provided quantified reductions in VOC, NO_X, and CO emissions in Ohio based on MOVES modeling.

On December 21, 2022, the Governor of Missouri also submitted a petition requesting the removal of the 1-psi waiver for E10 beginning in the summer of 2023. The petition provided quantified reductions in VOC, NO_X, and CO emissions in Missouri based on MOVES modeling.

Subsequent to submission of the petitions, all petitioning states except Missouri provided EPA with additional emissions modeling documentation, including for particulate matter (PM) and benzene.[17] The original data submitted showed a decrease in VOC, NO_X, and CO emissions with removal of the 1-psi waiver, while the additional data demonstrated an increase in PM for both nonroad and on-road emissions with removal of the 1-psi waiver. The benzene results demonstrated an increase in benzene on-road emissions, and a decrease in benzene nonroad emissions.

All the petitioning states requested removal of the 1-psi waiver in all areas within their state for which the limitation under CAA section 211(h)(1) applies. Therefore, the requests did not include areas within the states where RFG is required because the 1-psi waiver does not apply to RFG. The petitioning states also requested that the removal of the 1-psi waiver should take effect for the 2023 high ozone season, without further discussion. The states noted that rescinding the 1-psi waiver for E10 would support year-round sales of E15.

V. MOVES Modeling Results

The petitioning states provided technical documentation with their petitions to demonstrate the reduction of emissions with the removal of the 1-psi waiver as required by CAA section 211(h)(5) in the form of MOVES modeling results.[18] The results for each state were based on a single day in July 2023, which falls within the high ozone season. Comparative results demonstrate the change in emissions from the current 10.0 psi RVP standard to the alternative 9.0 psi RVP standard as contemplated by the statute.[19] A summary of the emission impacts of removing the 1-psi waiver for E10 for each state is provided in Table V–1.[20]

TABLE V–1—CHANGE OF MOBILE SOURCE EMISSIONS IN 2023 MOVES3.01 SOURCES FROM 10.0 PSI TO 9.0 PSI

State	Pollutant/precursor								
	CO (percent)	NO_X (percent)	VOC (percent)	$PM_{2.5}$ (percent)	PM_{10} (percent)	Benzene (percent)	Toluene (percent)	Ethylbenzene (percent)	Xylene (percent)
Illinois	−0.19	−0.05	−0.9	0.09	0.10	−0.2	−1.5	−0.9	−0.9
Iowa	−0.44	−0.09	−1.8	0.14	0.15	−0.1	−3.3	−2.1	−2.1
Minnesota	−0.52	−0.09	−2.7	0.15	0.16	−1.3	−4.2	−3.0	−3.1
Missouri	−0.41	−0.14	−0.66	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	−0.48	−0.09	−2.6	0.17	0.18	−0.6	−4.4	−2.9	−3.0
Ohio	−0.45	−0.13	−1.6	0.30	0.32	0.08	−2.8	−2.0	−2.0
South Dakota	−0.53	−0.06	−2.9	0.08	0.08	−1.1	−4.8	−3.4	−3.3
Wisconsin	−0.44	−0.10	−1.7	0.21	0.22	−0.3	−2.7	−1.8	−1.8

Each of the petitioning states' submissions demonstrated reductions in emissions of CO, NO_X, and VOCs within the state upon removal of the 1-psi waiver. These demonstrated reductions are sufficient to fulfill the statutes' supporting documentation requirement. We seek comment on this data.

VI. Evaluation of Petitions for Removal of the 1-psi Waiver

We have assessed the supporting documentation provided by the petitioning states and find that the MOVES modeling results submitted to EPA demonstrate a reduction in emissions of multiple pollutants upon removal of the 1-psi waiver for E10, as required under CAA section 211(h)(5). In particular, the modeling demonstrated emissions reductions in CO, NO_X, and VOCs. Emissions of these pollutants contribute to air pollution in the states.[21] We note that the same documentation also shows an increase in emissions of other pollutants such as PM. As discussed in Section III, we do not interpret the statute as requiring reductions in all pollutants. Documentation of reductions in several

[16] July 28, 2022, Letter from Governor Kelly of Kansas to EPA, available in the docket for this action. October 13, 2022, Letter from Governor Burgum of North Dakota to EPA, available in the docket for this action.

[17] See ''Emissions Impacts of the Elimination of the 1-psi RVP Waiver for E10,'' May 9, 2022; ''Emissions Impacts of the Elimination of the 1-psi RVP Waiver for E10 in Ohio,'' June 10, 2022, available in the docket for this action. While we have not yet received additional information from Missouri about other pollutants as we have received from the other petitioning states, we anticipate directionally similar trends.

[18] EPA developed MOVES to estimate air pollution emissions from on-road and nonroad mobile sources.

[19] Further information about the MOVES runs, including inputs and nonroad data is available in the docket for this action.

[20] EPA's evaluation of the MOVES model input data and assumptions, and results, can be found in the MOVES Technical Support Document for this action.

[21] Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

pollutants, including, in particular, VOCs, is sufficient.

Therefore, based on the governors' requests, we are proposing to remove the 1-psi waiver in the petitioning states based on the supporting documentation provided, as required by the CAA.

VII. Statutory Provisions on Implementation and Effective Date

Under CAA section 211(h)(5)(C), the regulations removing the 1-psi waiver shall take effect on the later of: (1) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or (2) 1 year after the date of receipt of the notification. The high ozone season is defined in EPA's regulations as ''June 1 through September 15 for retailers and [wholesale purchaser consumers (WPCs)], and May 1 through September 15 for all other persons,'' which includes gasoline distribution terminals.[22]

Under this language, for the petition dated April 28, 2022, the later date is April 28, 2023. Therefore, the earliest date on which the removal of the 1-psi waiver for Illinois, Iowa, Nebraska, Minnesota, South Dakota, and Wisconsin could be effective is April 28, 2023. This date would be in advance of the high ozone season beginning May 1, 2023. For the petition from Ohio, dated June 10, 2022, the later date is June 10, 2023. This would place the effective date within the 2023 high ozone season (*i.e.,* 10 days after the beginning of the high ozone season for retailers and WPCs, and 41 days after the beginning of the high ozone season for all other parties). Finally, for the petition from Missouri, dated December 21, 2022, the later date is December 21, 2023.[23] This would place the effective date after the 2023 high ozone season.

Further, under CAA section 211(h)(5)(C), the effective date can be extended if the Administrator, on his own motion or on petition from any person, after consultation with the Secretary of Energy, determines there would be an insufficient supply of gasoline in a state that has requested the removal of the 1-psi waiver for E10.[24] The statute further provides that the effective date can be extended for not more than one year, and that the Administrator may renew the extension for two additional periods, each of which shall not exceed 1 year.

As described above, EPA is allowed to extend the effective date of the removal of the 1-psi waiver upon a finding of ''insufficient supply of gasoline in the [petitioning] state'' resulting from ''the promulgation of the regulations [to remove the 1-psi waiver].'' [25] ''Insufficient supply of gasoline'' is not defined in the statute, and thus EPA applies its expertise to interpret and apply the phrase in a manner that is consistent with the structure of the statute, historical application of similar or related provisions, and congressional intent. We interpret ''insufficient supply of gasoline'' to require a demonstration that gasoline supply disruptions are likely resulting from removal of the 1-psi waiver, such that the necessary quantities of gasoline may not be available in the states at the time they are required. It is particularly appropriate in this case to consider the possibility of supply disruptions, and the ability of the fuel to be physically produced and transported to the petitioning states because this action would call for a different grade of gasoline to be produced and transported to the appropriate states. In considering the likelihood of supply disruptions, we look to the entire production and distribution chain, from the refinery where gasoline is produced, through distribution systems such as pipelines and trucking, and ultimately to the retail station. This reading is also similar to EPA's interpretation of other provisions in section 211 that call for consideration of constraints on fuel supply when EPA is acting on petitions within the fuels program. For instance, CAA section 211(k)(6)(A)(ii) allows EPA, after consultation with the Secretary of Energy, to extend the effective date for a state that has petitioned to opt into the RFG program for a period that is up to one year from the date of receipt of the petition upon a finding of insufficient domestic capacity to produce RFG. A related provision in CAA section 211(k)(6)(B)(iii) would allow the Administrator to extend the effective date for areas within the ozone transport region established under CAA section 184 that opt into RFG, upon a finding of insufficient capacity to supply RFG. Like the phrase ''insufficient supply of gasoline'' in CAA section 211(h)(5)(C), the statute does not define either ''insufficient domestic capacity'' or ''insufficient capacity to supply RFG.'' But in acting on petitions to opt-into RFG, EPA has explained that setting the effective date allows the Administrator to consider any sudden and unexpected increases in the demand for RFG on the local supply and distribution system that is caused by an opt-in.[26]

In contrast, the phrase ''insufficient supply of gasoline'' differs from other sub-provisions of CAA section 211 allowing for waivers of applicable requirements as well as implementation delays that use language such as ''inadequate domestic supply.'' [27] The D.C. Circuit has provided guidance on the meaning of ''inadequate domestic supply'' in CAA section 211(o)(7)(A)(ii), finding that EPA may properly consider ''supply side factors—such as production and import capacity,'' but not downstream effects.[28] While the analysis supporting such findings is likely to be similar for these production factors, we find that under CAA section 211(h)(5), the analysis properly should consider production factors, as well as the distribution of fuel from the refinery, through the distribution chain, including pipelines and terminals, to the ultimate endpoint of the gasoline distribution chain, the retail station. CAA section 211(h)(5) explicitly contemplates the ''supply of gasoline in the State,'' whereas CAA section 211(o)(7)(A)(ii) did not further modify ''supply.'' [29]

EPA's reading of ''adequate supply'' in CAA section 211(c)(4)(C)(ii) would also appear to comport with our interpretation of CAA section 211(h)(5)(C) given that Congress intended for EPA to act within certain unique emergency circumstances to relieve supply disruptions within the ''motor fuel distribution system.'' [30] And

[22] 40 CFR 1090.80. We note that given the current definition of ''high ozone season,'' the later date will always be one year after receipt of the request from a governor.

[23] We recognize that the Missouri petition requested that the removal take effect for the 2023 high ozone season. However, such an effective date is not permissible under CAA section 211(h)(5)(C).

[24] CAA section 211(h)(5)(C)(ii).

[25] CAA section 211(h)(5)(C).

[26] 62 FR 30261, 30263 (June 3, 1997)(''Section 211(k)(6)(A) of the Act gives the Administrator discretion to ''establish an effective date * * * as he deems appropriate* * *.'' EPA interprets this provision to mean that it has broad discretion to consider any factors reasonably relevant to the timing of the effective date. This would include factors that affect industry and the potential opt-in area. The factors that affect industry could include productive capacity and capability, other markets for RFG, oxygenate supply, cost, lead time, supply logistics for the area, potential price spikes, and potential disruption to business.'')

[27] See CAA section 211(m)(3)(C), 211(o)(7)(A)(ii).

[28] See *Americans for Clean Energy* v. *EPA,* 864 F.3d 691, 710 (2017). Notably CAA section 211(o)(7)(A)(ii) does not specify the product that is to be inadequate or to whom the supply is inadequate. This is in contrast to 211(h)(5)(C)(ii) which provides that it is an insufficient supply of gasoline in the petitioning state.

[29] CAA section 211(h)(5)(A). [T]he Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

[30] CAA section 211(c)(4)(C)(iii)(V).

while ''motor fuel distribution system'' is not defined in the statute, EPA's historical practice in granting waivers under section CAA section 211(c)(4)(C)(ii) has been to consider all stages of the gasoline production and distribution system within states that are experiencing emergency circumstances.

Finally, we note that consideration of the effective date for this action properly considers supply to the ultimate consumer given the statutory language ''in the State.'' Therefore, our analysis of ''insufficient supply of gasoline'' properly considers all stages of the gasoline production and distribution system, from the refinery to the retail station.

VIII. Fuel System Impacts

In this section, we discuss the potential impacts of removing the 1-psi waiver in the petitioning states on the fuel production and distribution system, including impacts that would potentially affect gasoline refineries, pipelines, fuel terminals, retail stations, and, ultimately, consumers. Further detail on this topic is available in the ''Technical Support Document for the Proposed Removal of the 1-psi Waiver.''

In short, this proposed action would require a lower volatility conventional gasoline before oxygenate blending (CBOB) [31] to be produced by refineries and distributed by pipelines and terminals, and, for the blended fuel, ultimately sold at retail stations in the petitioning states.[32] For much of the area covered, the new lower RVP fuel would simply replace the existing fuel, in which case the impacts are primarily associated with the refinery changes needed to produce the new fuel. However, in many areas, this would be a new fuel in addition to the fuel designed to utilize the 1-psi waiver upon blending of 10 percent ethanol (*e.g.,* a terminal or refinery that distributes gasoline to states both with and without the 1-psi waiver). In these areas, there would be additional impacts associated with fuel distribution system changes needed to distribute the additional grades (regular and premium) of the new lower RVP blendstocks.

We note first that volatility controls for gasoline differ across various states and regions within states. Summer gasoline for use in the continental U.S. must comply with either the federal RVP standard of 9.0 psi or the more stringent RVP standard of 7.8 psi, unless the summer gasoline is either for use in an RFG covered area, is subject to California's gasoline regulations, or EPA has waived preemption and approved a state request to adopt a more stringent RVP standard into a State Implementation Plan (SIP). Most of the U.S. utilizes ''conventional gasoline,'' for which the federal RVP standard is 9.0 psi, with a 1.0 psi allowance for gasoline blended with 10 percent ethanol. There are also areas that utilize conventional gasoline for which the federal RVP standard is 7.8 psi, and in such regions, the 1.0 psi allowance also applies for gasoline blended with 10 percent ethanol.[33] Several states have ''boutique'' low RVP fuel programs or SIP programs [34] that allow the 1-psi waiver for gasoline blended with 10 percent ethanol.[35] Some boutique fuel programs, or SIP-approved fuel programs, however, disallow the 1-psi waiver for gasoline blended with 10 percent ethanol and in those areas, such gasoline must meet the applicable state RVP standard of either 9.0 psi, 7.8 psi, or 7.0 psi.[36] Additionally, approximately 30 percent of the gasoline sold in the U.S. is RFG, which must meet a 7.4 psi RVP standard.[37] The 1-psi waiver does not apply to RFG, and thus E10 gasoline blended with 10 percent ethanol that is sold in RFG areas must meet the 7.4 psi RVP standard. This proposed action would remove the 1-psi waiver only for conventional gasoline that is sold in the petitioning states and not such gasoline sold in RFG and SIP program areas. However, due to the interconnected nature of gasoline distribution, and the changes required for a new fuel type, impacts on gasoline quality and supply would be expected to extend beyond the petitioning states, as further described below.

A. Production

We begin with a discussion of the necessary modifications to refineries to supply a lower volatility gasoline. There are 11 petroleum refineries located within the petitioning states; that number increases to 40 refineries if refineries located in states that border the petitioning states are included. However, additional refineries outside of the immediate region may modify their operations to provide a lower RVP fuel, as currently some of the gasoline supply for the petitioning states also comes from refineries located further west, east, and south, including refineries in the Gulf Coast.[38] For example, gasoline sold in Iowa is often produced by refineries located in Texas and distributed via pipeline. Therefore, this action could result in changes at refineries both within and outside of the Midwest region. Under EPA's current fuel quality regulations, most refineries producing gasoline for use in the petitioning states produce a CBOB with an RVP standard of 9.0 psi during the summer season, with the 1-psi waiver allowing the final gasoline-ethanol blend to meet an RVP standard of 10.0 psi when 10 percent ethanol is added downstream. With the removal of the 1-psi waiver, refineries that produce CBOB for use within the petitioning states would be required to make changes to their operations to reduce the volatility of the CBOB distributed to these states to approximately (or slightly below) 8.0 psi in order to enable the final gasoline-ethanol blend to comply with the 9.0 psi RVP standard, which could have corresponding impacts on the supply of gasoline. For some refineries, removal of the 1-psi waiver may result in the refinery reducing the volatility of all the CBOB they produce. For other refineries, it may result in a choice to produce a new 8.0 psi RVP CBOB for distribution to the petitioning states, while continuing to produce the current 9.0 psi RVP CBOB for distribution to other states.[39] At this

[31] Gasoline before oxygenate blending (BOB) means gasoline for which a gasoline manufacturer has accounted for oxygenate (*e.g.,* denatured fuel ethanol) added downstream. See 40 CFR 1090.90. BOB is subject to all requirements and standards that apply to gasoline under EPA's fuel quality regulations, and refineries typically formulate their BOBs with the intent that it will be blended downstream with ten percent ethanol content to maintain compliance with EPA and industry specifications. Conventional BOB (CBOB) is BOB produced or imported for areas outside of RFG areas otherwise known as conventional areas.

[32] Because the gasoline distribution system has been configured to utilize 10 percent ethanol and optimized to utilize the octane value of ethanol, we expect ethanol to be blended at least at the same levels it is blended today. Thus, we anticipate that E10 would continue to be the dominant form of gasoline supplied to the region, but would now be blended into a lower volatility blendstock produced by the refineries.

[33] 40 CFR 1090.215(a)(2), (b)(1).

[34] Of particular note for this action, seven counties in southeast Michigan that border Ohio have an RVP standard of 7.0 psi in the summer, with a 1-psi waiver for E10.

[35] See *https://www.epa.gov/gasoline-standards/state-fuels.*

[36] 40 CFR 1090.215(b)(3). See also *https://www.epa.gov/gasoline-standards/state-fuels.*

[37] 40 CFR 1090.215(a)(3). The Chicago and St. Louis areas are such RFG areas.

[38] According to the Energy Information Administration (EIA), 64 million barrels of gasoline were shipped from PADD 3 into PADD 2, which corresponds to about 8 percent of the volume of gasoline consumed in PADD 2. Movements by Pipeline, Tanker, Barge and Rail between PAD Districts, PADD 3 to PADD 2; *https://www.eia.gov/dnav/pet/pet_move_ptb_dc_R20-R30_mbbl_m.htm.*

[39] Certain areas within the petitioning states and other states already have more stringent RVP standards during the summer. Gasoline that refineries produce for these areas would be unaffected by this proposed rule. Refineries that produce 7.8 psi RVP CBOB for the 7.8 psi RVP areas, or 7.4 psi RVP RBOB for RFG areas could

Continued

time, we cannot predict which of the refineries that currently produce fuel for use in the petitioning states would choose to produce 8.0 psi RVP CBOB for use in the petitioning states. Unlike a nationwide change to the RVP of CBOB, the regional nature of this action means that not all refineries must adjust their refining processes to provide a lower RVP CBOB. While it is highly likely that refineries that supply gasoline only to the petitioning states would adjust their refinery processes to reduce the RVP of their CBOB, these refineries could choose to avoid the necessary investments and provide 9.0 psi RVP CBOB to non-petitioning states instead.

Throughout the year, refineries must adjust the volatility of their gasoline—typically lowering volatility of the gasoline in the summer and increasing the volatility in the winter by adjusting the quantity of light hydrocarbons in their gasoline. Refineries typically control gasoline volatility by adjusting the amount of butane in gasoline, but sometimes they need to also modify the amount of pentane in gasoline. Refineries providing fuel to the petitioning states would have to modify their summertime production operations and potentially add capital equipment to accommodate the 1-psi lower RVP standard in the summer. A refinery's ability to adapt to the 1-psi lower RVP standard and the time that it takes depends on the refinery's structure, operations, and the crude slate they run. Further discussion of the changes we expect from refiners associated with removal of the 1-psi waiver is available in to the ''Technical Support Document for the Proposed Removal of the 1-psi Waiver.'' [40]

In addition to contributing to gasoline's volatility, butane also contributes to gasoline's octane and volume. Thus, when removing butane, refineries must also make other changes to replace the lost octane in order to keep the product consistent and in compliance with EPA and industry specifications. Refineries could produce more alkylate or reformate, which are two high octane gasoline blendstocks, to make up the lost octane. We estimate that the amount of butane that would have to be removed to produce a gasoline 1 psi lower in RVP amounts to about 2 volume percent of the volume of gasoline that would be sold to the petitioning states, which will affect the supply of gasoline in those states.

Regardless of how a refinery is modified to lower the RVP of gasoline, it will result in additional butane being produced by the refinery. If excess onsite butane storage capacity is available, the refinery has the option of saving excess butane on-site for use in winter gasoline production, which would minimize the cost impact of the removal of the 1-psi waiver. However, if excess butane storage is not available, the refinery would then need to store it offsite (*e.g.,* in caverns), sell it, or export it. This may require additional butane rail cars and refinery upgrades for handling rail cars. Refineries may also utilize some portion of the butane as a feedstock to their alkylation unit. In the near term, the large additional influx of excess butane may exceed the existing storage capacity, transport capacity, amount desired in the markets, or alkylation unit capacity. This could then limit refinery flexibility to produce gasoline, further impacting supply and production costs.

Given the high demand for gasoline in the summer months, refineries often begin producing summertime fuel for storage well ahead of the upcoming high ozone season. This process can begin as early as December of the year prior to the applicable high ozone season, and thus storage of a differing volatility of fuel could impact the refinery's ability to utilize the fuel the next summer without further modification.

B. Distribution

As discussed above, this rulemaking would require a new lower RVP grade of gasoline to be produced by refineries that distribute gasoline to the petitioning states. In some areas, this may mean producing an additional grade of gasoline. An additional gasoline grade would require parties involved in gasoline distribution to reconfigure their pipelines, terminals, and operations in order to accommodate such a fuel grade. Such changes are likely to affect distribution both within and outside of the petitioning states given the interstate nature of gasoline distribution. There are three primary groups within the distribution chain that would be impacted: refineries, pipelines (with their breakout terminals), and downstream product terminals.

1. Refinery Distribution

Most refineries have an onsite terminal with numerous product storage tanks wherein they accumulate and store the range of products that they produce prior to placing the products into the distribution system. Once a refinery accumulates a sufficient volume of a gasoline type and confirms that it meets the applicable gasoline specifications, the refinery then schedules the shipment of that batch of gasoline to downstream markets. Shipment can occur via an onsite product terminal analogous to that discussed in Section VIII.B.3 where trucks load product and deliver to retail stations. However, most gasoline is loaded onto product pipelines for delivery to downstream product terminals. In some cases, refineries also distribute product by rail or barge. For those refineries that distribute all, or even most, of their gasoline to the petitioning states, this proposal will have little impact on their distribution operations. They can switch over their existing product tanks to hold only the lower RVP gasoline blendstock. However, for those refineries that produce gasoline for both the petitioning states and non-petitioning states, they may need to add additional tanks, pipes, manifolds, and control systems to store the additional grades of gasoline. The time needed to plan, design, permit, and construct additional tankage is typically on the order of two or more years. Until this can be accomplished, the refinery may need to shift some or all of its production to the lower RVP blendstock.[41] This could then result in a period where the market goes through a sorting out process wherein different refineries focus on different products and shift their historic markets, perhaps requiring more of one product or requiring another product to flow in from outside the petitioning states (*e.g.,* from Gulf Coast refineries). All of this can have significant impacts on gasoline supply not only on the petitioning states, but also on the surrounding states. It may be that, due to tankage and logistical limitations, refineries serving both markets may all initially shift all of their production to the lower RVP blendstock. This would result in lower RVP fuel in the surrounding states and compound the overall impact on gasoline supply of butane removal.

In addition to tankage changes, the refineries would also need to adjust their operations and schedules for loading gasoline blendstock onto pipelines, barges, or rail in order to split their production into separate product streams. These logistical changes would initially take some period of time in order to occur smoothly and safely but should streamline over time.

expand production of these grades for use in these states rather than create a new grade at 8.0 psi RVP. This may reduce distribution cost complexity, but in exchange increase refinery production cost and lower gasoline production volume.

[40] Available in the docket for this action.

[41] Alternatively, some refineries may shift all premium grade fuel to the lower RVP, while maintaining production of the lower RVP and 9.0 psi RVP CBOBs.

2. Pipelines and Pipeline Breakout Terminals

The majority of fuel in the U.S. flows from refineries to markets via pipeline systems. Because refineries are located throughout the Midwest, the pipeline companies must pick up these gasoline batches where they are located, which can be at the start, middle, or even near the end of the pipeline; the gasoline then moves to its destination markets. As discussed in Section VIII.B.1, some portion of gasoline produced for use in the petitioning states comes from refineries located outside the petitioning states.

There are a number of pipeline systems serving the petitioning states, the vast majority of which serve both the petitioning states as well as non-petitioning states.[42] The pipelines transport a wide variety of fuels and other products (*e.g.,* gasoline, diesel, jet fuel, heating oil, petroleum blendstocks, etc.), including an array of different grades of gasoline (*e.g.,* conventional gasoline, RFG, state specific grades, and regular and premium grades of each). Each grade and type of gasoline must be segregated from other grades and types to preserve the physical properties of each product. Consequently, the addition of the new lower RVP gasoline blendstocks required for the petitioning states would require significant changes in the operations of the pipeline systems. What was one large fuel market would now be divided in two, requiring smaller batch sizes, changes in scheduling, and in some cases cutting off historic supplies from some sources and making changes to find alternative sources of supply. There would thus be a period where the pipeline systems go through a planning and optimization process in order to adjust to the new fuel requirement. Decisions from refineries on whether they will supply a lower RVP CBOB, and at what volumes, would be necessary to inform the planning and optimization process by pipeline systems. All of this can have significant impacts on gasoline supply not only to the petitioning states, but also to the surrounding states in the short term. Having the wrong fuel grades in the wrong volume can result in an inability for the pipeline to move fuel in and out of tankage as needed, which, in turn, can result in significant fuel supply disruption not only for the gasoline grade in question, but also for all of the fuels shipped on the pipeline. For the longer term, due to the bifurcation of the market into different grades, some areas in the petitioning states may lose redundancy for supply, which may then lead to more frequent shortfalls in supply during times of disruption (*e.g.,* refinery fire, pipeline outage, hurricane, etc.).

The most significant impact on pipeline operations from the bifurcation of the gasoline supply caused by a final action on this proposal, however, will be on pipeline breakout tankage operations. Breakout tankage is required at junctions where pipelines connect with differing schedules and flow rates. Thus, the pipelines typically need tankage to store every grade of product distributed on the pipeline, with the size and configuration of the tankage matched to the product and pipeline batch sizes. If new regular and premium grades of the lower RVP CBOB needs to be shipped on the pipeline, then it may require the addition of new tankage at these breakout tank facilities. The planning, permitting, and construction of such additional tankage would require two or more years. This is likely to be an issue at a number of breakout tankage facilities both inside and outside the petitioning states. Until this additional breakout tankage can be brought into service, an impacted pipeline serving the area may be restricted to distributing either the higher or lower RVP gasoline, limiting gasoline supply to either the petitioning states or the other surrounding states, and in turn restricting what the refineries shipping on the pipeline are able to produce if the pipeline restrictions do not allow for the distribution of a particular type of gasoline. Some pipelines may opt to carry one fuel grade and some the other, limiting the product offerings at the various downstream product terminals. As with the refineries, it may be that due to tankage and logistical limitations, pipelines currently serving both markets may initially shift all of their production to the lower RVP blendstock. This would result in lower RVP fuel in the surrounding states and compound the impact on supply of butane removal. Pipelines would have the option to blend in butane during gasoline transport to the states with the 1-psi waiver that are located at the end of the pipeline systems (*e.g.,* North Dakota and Michigan). This would alleviate some of the excess butane produced from refineries in the affected states and could reduce consumer costs in the border states by blending up to 9.0 psi RVP gasoline. This method could ease some of the fungible pipeline bifurcation issues by allowing more of the lower RVP gasoline to be produced. However, similar to refineries, not all pipeline and terminal facilities currently have the existing infrastructure to utilize butane blending. Additional tankage and equipment may be needed to maximize the potential of this opportunity.

Some pipeline companies operate a fungible distribution system. This allows them to collect a standard grade of gasoline from refineries into their system and ''transport'' the barrels quickly to their destination. The barrels delivered are not actually the purchased barrels from the refinery, but rather the same product meeting the same specifications from another refinery. An additional grade of gasoline would disrupt their ability to function as efficiently using the fungible system. This increases the complexity associated with ensuring products are able to be distributed to locations in the time frame needed to ensure supply to the market.

3. Product Terminals

Moving gasoline to market also involves the downstream product terminals and bulk plants. The product terminals and bulk plants accumulate gasoline from pipelines and other bulk distribution systems and distribute the gasoline to retail outlets via tank trucks loaded at racks at the terminal. Each rack has the ability to load several different grades of gasoline depending on how they were constructed; all racks can load premium and regular gasoline, but some racks have added additional changes to accommodate additional grades of gasoline at the same time. The potential impact on product terminals varies depending on whether the terminals provide gasoline only in the petitioning states, or in non-petitioning states as well. Those terminals that only provide gasoline to the petitioning states would be little impacted, as they would simply take delivery of replacement grades of lower RVP CBOB beginning in the spring leading into the summer season. They would not have to contend with adding additional fuel grades and the tankage and logistics associated with them. This would most likely not be the case for terminals that serve areas both within and outside the petitioning states. If such terminals do not have sufficient onsite tankage capacity to handle the additional regular and premium grades of lower RVP CBOB, then they would need to either add the tankage or choose to focus on one market or the other. The decision to focus on a particular market or fuel type may also be dictated by a fuel marketer on the retail side. Both of these options could have fuel supply, cost, and price

[42] See, ''Technical Support Document for the Proposed Removal of the 1-psi Waiver,'' available in the docket for this action.

impacts both within the petitioning states and in the surrounding areas the terminals serve. Approximately 75 such terminals are located close to the borders (*i.e.,* 30 miles) between petitioning states and non-petitioning states. These terminals are more likely to provide gasoline to both types of states and would need to change their gasoline distribution patterns if they lack extra tankage to handle the additional lower RVP gasoline grades.[43] Since terminals can serve gasoline markets up to 200 miles away, the number of terminals impacted could be significantly greater.

Regardless of whether the terminals serve only the petitioning states, or also other states, the terminals would all be impacted to some degree by a somewhat more challenging transition in the spring from winter gasoline to summer gasoline, particularly in the first year. While this transition occurs every year as the terminals blend down the volatility of the gasoline they have in storage from the higher RVP of winter gasoline to the lower RVP of summer grades, the change of having to blend down to ~8.0 psi RVP CBOB instead of ~9.0 psi RVP CBOB would require additional time and incur additional cost. Due to blending realities, pipelines and terminals would request lower RVP fuel to blend down to a fuel that meets the RVP specifications; to achieve an ~8.0 psi RVP CBOB, blending of gasoline with an RVP as low as 6.0 psi is likely to be necessary. Terminals additionally would likely take steps to ensure tanks are drained as low as possible prior to receiving a lower RVP gasoline, which could add to timing constraints. This would likely occur more frequently at terminals near the border of the petitioning states.

4. Tank Trucks

Moving gasoline to market also involves tank trucks that deliver the gasoline to the retail stations. In some respects, their operations should be little impacted by the lower RVP standard for gasoline in the petitioning states; they would simply pick up a different grade of gasoline from the product terminal than they did before. However, depending on the changes in product offering at the terminals, there may still be considerable stress put on their operations. If some refineries, pipelines, or terminals limit their product offering to either the lower or higher RVP grades, especially in the near term, then the tank trucks would need to shift their operations accordingly. In some cases, this would be expected to increase the distances traveled, which may in turn require the purchase of additional tank trucks and hiring of additional drivers. As with the rest of the distribution system, this can all be accomplished, but would take some time for the market to respond and optimize around the new norms.

C. Retail Operations

The proposed removal of the 1-psi waiver and resulting transition from 10.0 psi RVP gasoline to 9.0 psi RVP gasoline received from the terminal should be minor for the retail stations—they would simply take delivery of the lower volatility gasoline from the terminal. The most noticeable effects would be seen at retail stations near the borders of states maintaining the 1-psi waiver, as the cost of 9.0 psi RVP gasoline within the petitioning states is likely to be higher than that of 10.0 psi RVP gasoline across the border in the other states. The retailers within the petitioning states may have to charge higher prices to recoup this cost, which could result in consumers preferentially choosing to refill at stations across the border when possible.[44] The retail operations located near state lines on the border of petitioning and non-petitioning states may have issues scheduling gasoline shipments to their retail outlets if tank trucks are shipping their gasoline from terminals located further away and if there is an initial shortage of tank truck operators, particularly at the beginning of the transition to the new lower RVP fuel.

IX. Cost Impacts

There are associated costs with the changes to the refining and distribution systems described in Section VIII. Part of the cost would be incurred by the refining sector, while another portion would be incurred by the gasoline distribution system. This is discussed briefly below with a more in-depth discussion in the ''Technical Support Document for the Proposed Removal of the 1-psi waiver.''

The refining sector would incur a cost in several different ways. The largest portion of the cost is the lost opportunity cost for having to sell the removed butane at market prices for butane instead of blending it into high value summer gasoline. There are also additional capital and operating costs as described in Section VIII.A that would need to be recouped over time. Two separate refinery modeling studies conducted by Mathpro examined the long-term refining cost for removing the 1-psi waiver—one conducted for the Renewable Fuels Association (RFA)[45] and another conducted for the International Council on Clean Transportation (ICCT).[46]

Both Mathpro studies estimated refining costs to be about 2 cents per gallon, but their analysis assumed three years of lead time and assumed that the entire nationwide conventional gasoline pool would be converted over to the lower RVP gasoline. We seek comment on whether these costs might be different if EPA were to use different assumptions, including a shorter lead time and only regional application to the petitioning states, as opposed to analysis of the change nationwide. Mathpro did not assess or quantify the additional costs that would likely be incurred by the fuels distribution system to distribute 8.0 psi RVP CBOB in addition to the present slate of gasoline grades currently being provided. As described in Section VIII.B, the need to distribute an additional grade of gasoline would require changes in the operations of pipeline, terminals, and tank trucks, and in some cases would be expected to require an additional set of gasoline storage tanks or tank trucks. There likely would be other costs associated with distributing an additional grade of gasoline. Since conventional gasoline consumed in the Midwest would be divided between the two different gasoline grades, gasoline batch sizes would be smaller in many cases, which would increase the cost of distributing both gasoline grades. Furthermore, if refineries serving the Midwest only produce one of the two gasoline grades, it could mean that other refineries would have to produce a portion of the gasoline previously served by that refinery, and the gasoline sold by both of those refineries would likely need to be moved further distances than before, increasing the distribution cost for both refineries' gasoline. Similarly, if downstream terminals decide to only sell one of the two gasoline grades, which requires that they sell solely into petitioning states or non-petitioning states, it likely would require that the trucks that distribute the gasoline from that terminal would have to travel further distance than they currently do.

The cost estimates detailed in the ''Technical Support Document for

[43] EIA. U.S. Energy Atlas—Oil and Natural Gas Maps. *https://www.eia.gov/maps.*

[44] This phenomenon is observed today in SIP and RFG regions.

[45] ''Assessment of a 1-psi reduction in the RVP of Conventional Gasoline Blendstock (CBOB) in the Summer Gasoline Season,'' prepared for Renewable Fuels Association by Mathpro, December 1, 2021.

[46] Refining Economics of a National Low Sulfur, Low RVP Gasoline Standard; prepared for the International Council for Clean Transportation.

Proposed Removal of the 1-psi Waiver'' reflect cost impacts assuming the fuels market has had the chance to make the necessary investments to accommodate the change. In the near term, while the market is going through the iterative process of deciding what parties produce and distribute which fuels for which markets and before the necessary capital has been invested, constructed, and put into service, the impacts on supply could have a substantially higher impact on the gasoline prices consumers pay. The current gasoline supply shortfall in the Midwest may provide one indication of what supply-induced gasoline price impacts may be. As further described in the ''Technical Support Document for Proposed Removal of the 1-psi Waiver,'' in late summer the low volume of gasoline storage in the Midwest grew to about 8 percent lower than the five-year minimum levels due to a supply shortfall there. This may explain why regular grade conventional gasoline was priced about 28¢ per gallon higher in the Midwest than Gulf Coast prices compared to previous years. This low gasoline inventory in the Midwest may be the cause of even larger impact on RFG pricing. Such large price impacts due to short term supply circumstances, particularly as compared to cost impacts, are possible should a drop in supply occur as a result of the removal of the 1-psi waiver in 2024.

X. Proposed Finding of Insufficient Supply and Delay of Effective Date

In this action, we are proposing an effective date of April 28, 2024, for all petitioning states. After consideration of the extension petitions, we are proposing a 2024 effective date after determining that a 2023 implementation would result in insufficient supply of gasoline in the petitioning states.[47] Our finding of insufficient supply is based on an assessment of three potential supply constraints: (1) The already low gasoline inventories; (2) The need for early coordination between various parties to make the necessary physical changes to the gasoline production and distribution infrastructure and the associated lead time required; and (3) The physical loss of supply necessary to produce a lower RVP gasoline. We believe that these constraints are likely to lead to supply disruptions in the petitioning states.

Gasoline inventories in the Midwest are currently well below the five-year average minimum levels, and at the end of January 2022, were the lowest recorded since 1990 which the earliest year data is available.[48] An emergency refinery closure in the Midwest has reduced the volume of gasoline available in the region, and as of February 2023 the refinery has remained shuttered. The gasoline inventories typically recover over the winter in the Midwest; however, they have remained low and this could lead to a shortfall in supply when gasoline demand increases in the summer of 2023. EIA estimates a further increase in gasoline demand in 2023 compared to 2022.[49] If realized, this increased demand may be difficult to meet even without a change to the gasoline volatility standard.

Second, timing considerations to supply a new lower RVP CBOB would require coordinated investments, planning, and actions between refineries, pipelines and other fuel distribution companies, terminals, and retail outlets. Typically, this coordination occurs before winter to provide the fuel system a chance to make the proper preparations. We are now past the point in the calendar (late fall of the prior year) when such coordination typically occurs. We are also entering into the timeframe when refineries already have to begin producing fuel for use in the summer months. As such, refineries would not have sufficient and appropriate notice to begin modifying their fuel supply for the 2023 summer season.

Third, a reduction in supply is likely to occur simply as a result of the changes necessary to refine and distribute the lower RVP gasoline to the petitioning states. The removal of the light hydrocarbons to produce the lower RVP gasoline is estimated to reduce gasoline supply to the petitioning states by two percent, if refineries have the necessary equipment to remove, store, or sell the removed light hydrocarbons. It is likely that this necessary equipment would not be available for all refineries in the summer of 2023, thus complicating the process, and requiring an additional reduction in supply. The distribution system is likely to need additional fuel storage capacity to store and distribute the new fuel. These changes are also unlikely to be accommodated ahead of the 2023 summer season. At this time, we cannot quantify the gasoline supply impacts as a result of distribution issues; we seek input on such potential impacts.

Reductions in gasoline supply due to lowering the RVP of CBOB at the refinery could be made up through additional supply from other refineries in areas such as the Gulf Coast, or through additional production from Midwest refineries. However, without appropriate notice of this change, such reductions are not possible for the 2023 summer season. Additionally, the distribution infrastructure, including pipelines, terminals, and tank trucks, could allow for the distribution of lower RVP CBOB to the petitioning states. However, for such changes to mitigate any supply concerns, various market participants would require significant notice—first to the refineries at the beginning of the distribution chain, and then to each party downstream. Inherent in requiring a different grade of gasoline is a reduction in the fungibility of the gasoline supply system, thus increasing the likelihood of supply disruptions due to intermittent disruptions such as natural disasters and unanticipated refinery or pipeline shutdowns.

Based on the above assessment, EPA finds that the removal of the 1-psi waiver in petitioning states, if it were to take effect for the 2023 high ozone season, would result in an insufficient supply of gasoline in those states. As a result, EPA is proposing to delay the effective date of the removal of the 1-psi wavier by one year to April 28, 2024. This is the latest possible date for the initial petitions from Illinois, Iowa, Minnesota, Nebraska, South Dakota, and Wisconsin. We find it appropriate to have a single effective date for all petitioning states.

We seek comment on this proposed effective date, including whether this effective date provides sufficient notice to affected parties, and whether any necessary changes could be made in this timeframe to accommodate a summer 2024 effective date, or whether a renewal of the extension may be necessary.

XI. Associated Regulatory Provisions

We are proposing a new designation and associated product transfer document (PTD) language for summer CBOB in states where the 1-psi waiver for E10 has been removed under CAA section 211(h)(5).[50] Designations and PTD language requirements help ensure that batches of fuel are distributed and used in a manner consistent with EPA's fuel quality requirements. Without

[47] While the statute contemplates extensions of up to one year, with opportunity to renew the extension for an additional two years, the ''renew'' language indicates a need for EPA to do so in a subsequent, separate action.

[48] Total Motor Gasoline Stocks, Weekly Stocks; Petroleum and Other Liquids, US Energy Information Administration; *https://www.eia.gov/dnav/pet/pet_stoc_wstk_dcu_nus_w.htm.*

[49] EIA. Short Term Energy Outlook (STEO). October 2022.

[50] The designation and PTD language requirements for gasoline are located at 40 CFR 1090.1010 and 1090.1110, respectively.

proper designation, summer gasolines with different volatilities intended for use in different areas may get commingled in a fungible system, causing the introduction and use of non-compliant gasoline in areas that require lower volatility fuels in the summer. Similarly, PTD language serves to ensure that parties in the fuel distribution chain are aware of the designation of the fuel and accompanying Federal requirements for the distribution and use of the fuel. Because we are proposing requirements for new grade of summer CBOB in this action, we need to create a new designation and accompanying PTD language to ensure that the new CBOB is distributed and used consistent with the RVP requirements.

We are proposing that gasoline manufacturers would designate summer CBOB for use in states where we have removed the 1-psi waiver as ''Low-RVP Summer CBOB.'' We are also proposing related changes to the PTD language requirements so that gasoline manufacturers that produce Low-RVP Summer CBOB could accurately and consistently describe the fuel designation. All other designation and PTD provisions would still apply (*e.g.,* those designations related to the blending of ethanol). We believe this approach is the most straight-forward method for updating the designation and PTD requirements for Low-RVP Summer CBOB, and we seek comment on the new designation and related PTD language.

Based on discussions with affected stakeholders, we also considered whether it would be possible to use the existing designations of ''7.8 Summer CBOB'' for 9.0 psi RVP areas or the ''SIP-controlled Summer CBOB'' designation. The potential advantage of using existing designations is that the fuel distribution system would not have to adjust to the new product designation. However, we believe that there are potential disadvantages to using existing designations for low-RVP CBOB. First, we believe that most CBOB manufacturers would wish to target an RVP level of slightly higher than 7.8 psi to meet the 9.0 psi RVP standard. This could result in a CBOB that simultaneously could not lawfully use the 7.8 psi RVP designation because the RVP was too high or use the 9.0 psi RVP designation because the CBOB may be treated fungibly with other CBOBs that are intended for the 1.0-psi waiver for E10. Second, in the case of SIP-controlled Summer CBOB, the designation is not intuitive because this action is not part of any SIP and may result in confusion on the part of parties that distribute such CBOB. Because we believe that a new designation would much more effectively communicate to parties in the distribution chain how the low-RVP CBOB could lawfully be used more effectively than the existing designations, the use of the existing designations for such CBOB is not appropriate and are proposing a new designation as discussed above. Nevertheless, we seek comment on whether and how we could use the existing designations for this CBOB instead of creating a new designation.

In addition to proposing regulatory changes to effectuate the removal of the 1-psi waiver in the petitioning states, we are also proposing a regulatory mechanism for states to request the reinstatement of the 1-psi waiver under CAA section 211(h)(5). This would be available for the petitioning states, as well as any other state for which EPA removes the 1-psi waiver upon a request under CAA section 211(h)(5) in the future. During discussions with states and stakeholders, parties inquired whether such a provision could be included in this action. Regulations associated with such a request would provide all states with criteria under which such a request could be made and granted. We are proposing regulations allowing for the reinstatement of the 1-psi waiver that are modeled on the existing regulations in 40 CFR part 1090.295 that allow for the removal of 7.8 psi low-RVP fuels programs.[51] Removal of federal 7.8 psi low-RVP fuel programs is appropriately conditioned on either the ability of a state to demonstrate continued maintenance of the relevant ozone national ambient air quality standard (NAAQS) in an area (*i.e.,* the state may have included emission reductions from the federal 7.8 psi low-RVP fuel in its plan for the area to maintain the relevant ozone NAAQS) or the ability of the state to demonstrate that removing the requirement for the federal 7.8 psi low-RVP fuel in a nonattainment area would not interfere with any applicable requirement for attainment or reasonable further progress or any other applicable requirement of the CAA (*i.e.,* the state may have included emission reductions from the federal 7.8 psi low-RVP fuel in its plan for the area to attain the relevant ozone NAAQS).[52] We are proposing to only require a state to request the reinstatement of the 1-psi waiver in order for EPA to reinstate it, however, if the state has relied on the 1-psi waiver removal in a SIP, either pending or approved, the disposition of that SIP would need to be resolved prior to reinstatement of the 1-psi waiver. We are also proposing that, to provide appropriate notice and lead time for corresponding changes to fuel supply, we would again revise our regulations through a notice-and-comment rulemaking process to fully implement the request. We seek comment on this approach.

[51] In this action we are not reopening the regulations associated with removal of a federal 7.8 psi low-RVP program in a given area (40 CFR 1090.295) or the regulations that allow states to opt-out of the federal RFG program (40 CFR 1090.290). Any comments related to these provisions will be treated as beyond the scope of this action.

[52] See CAA section 110(l).

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made at the suggestion or recommendation of OMB have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0731. This action proposes the removal of the 1-psi waiver in eight states. It does not alter practices used by the existing recordkeeping and reporting requirements, nor does it change the number or type of respondents and the manner in which they satisfy the fuel designation and PTD requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the proposed rule has no net burden on the small entities subject to the rule.

Small entities that will be subject to this action include small refiners (which are defined at 13 CFR 121.201) that produce or distribute gasoline in

Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, or Wisconsin. This action proposes to remove the 1-psi waiver for E10 in these states and EPA is not aware of any small refiners that produce or distribute gasoline or diesel fuel in these states. Thus, there would be no burden from this action on any small refiner. Furthermore, the removal of the 1-psi waiver in these states does not substantively alter the regulatory requirements on parties that make and distribute gasoline. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(h)(5) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the state level and would affect gasoline refiners, blenders, marketers, distributors, and importers. Tribal governments would be affected only to the extent they produce, purchase, and use gasoline. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes the removal of the 1-psi waiver for eight states. As discussed in Section VIII, it will require changes to the production and distribution of gasoline, which is expected to have some short- and long-term impacts on gasoline supply and cost in the affected areas, but we believe the market will be able to accommodate the change without any significant disruption.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on communities with environmental justice concerns. This action proposes the removal of the 1-psi waiver in eight states, which could result in the reduction of several pollutants, including VOCs, NO_X, and benzene as modeled through MOVES. Other pollutants may increase, such as PM.

List of Subjects in 40 CFR Part 1090

Environmental protection, Administrative practice and procedure, Air pollution control, Fuel additives, Gasoline, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 1090 as follows:

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart C—Gasoline Standards

■ 2. Amend § 1090.215 by revising paragraph (b)(3) to read as follows:

§ 1090.215 Gasoline RVP Standards.

* * * * *

(b) * * *

(3)(i) RFG and SIP-controlled gasoline that does not allow for the ethanol 1.0 psi waiver does not qualify for the special regulatory treatment specified in paragraph (b)(1) of this section.

(ii) Gasoline subject to the 9.0 psi maximum RVP per-gallon standard in paragraph (a)(1) of this section in the following areas is excluded from the special regulatory treatment specified in paragraph (b)(1) of this section:

TABLE 1 TO PARAGRAPH (b)(3)(ii)—AREAS EXCLUDED FROM THE ETHANOL 1.0 PSI WAIVER

State	Counties	Effective date
Illinois	All	April 28, 2024.
Iowa	All	April 28, 2024.
Minnesota	All	April 28, 2024.
Missouri	All	April 28, 2024.
Nebraska	All	April 28, 2024.
Ohio	All	April 28, 2024.
South Dakota.	All	April 28, 2024.
Wisconsin	All	April 28, 2024.

* * * * *

■ 3. Add § 1090.297 to read as follows:

§ 1090.297 Procedures for reinstating the 1.0 psi RVP allowance for E10.

(a) EPA may approve a request from a state asking to reinstate the ethanol 1.0 psi waiver specified in § 1090.215(b)(1) for any area (or portion of an area) specified in § 1090.215(b)(3)(ii) if it meets the requirements of paragraph (b) of this section. If EPA approves such a request, an effective date will be set as specified in paragraph (c) of this section. EPA will notify the state in writing of EPA's action on the request

and the effective date of the reinstatement upon approval of the request.

(b) The request must be signed by the governor of the state, or the governor's authorized representative, and must include all the following:

(1) A geographic description of each area (or portion of such area) that is covered by the request.

(2) A description of all the means in which emissions reduction from the removal of the ethanol 1.0 psi waiver are relied upon in any approved SIP or in any submitted SIP that has not yet been approved by EPA, if applicable.

(3) For any area covered by the request where emissions reductions from the removal of the ethanol 1.0 psi waiver are relied upon as specified in paragraph (b)(2) of this section, the request must include the following information:

(i) Identify whether the state is withdrawing any submitted SIP that has not yet been approved.

(ii)(A) Identify whether the state intends to submit a SIP revision to any approved SIP or any submitted SIP that has not yet been approved, which relies on emissions reductions from the removal of the ethanol 1.0 psi waiver, and describe any control measures that the state plans to submit to EPA for approval to replace the emissions reductions from the removal of the ethanol 1.0 psi waiver.

(B) A description of the state's plans and schedule for adopting and submitting any revision to any approved SIP or any submitted SIP that has not yet been approved.

(iii) If the state is not withdrawing any submitted SIP that has not yet been approved and does not intend to submit a revision to any approved SIP or any submitted SIP that has not yet been approved, describe why no revision is necessary.

(4) The governor of a state, or the governor's authorized representative, must submit additional information needed to administer the reinstatement of the ethanol 1.0 psi waiver upon request by EPA.

(c)(1) Except as specified in paragraph (c)(2) of this section, EPA will set an effective date of the reinstatement of the ethanol 1.0 psi waiver as requested by the governor, or the governor's authorized representative, but no less than 90 days from EPA's written notification to the state approving the reinstatement request.

(2) Where emissions reductions from the removal of the ethanol 1.0 psi waiver are included in an approved SIP or any submitted SIP that has not yet been approved, EPA will set an effective date of the reinstatement of the ethanol 1.0 psi waiver as requested by the governor, or the governor's authorized representative, but no less than 90 days from the effective date of EPA approval of the SIP revision that removes the emissions reductions from the ethanol 1.0 psi waiver, and, if necessary, provides emissions reductions to make up for those from the ethanol 1.0 psi waiver reinstatement.

(d) EPA will publish a notice in the **Federal Register** announcing the approval of any ethanol 1.0 psi waiver reinstatement request and its effective date.

(e) Upon the effective date for the reinstatement of the ethanol 1.0 psi waiver in a subject area (or portion of a subject area) included in an approved request, the ethanol 1.0 psi waiver will apply in such subject area.

■ 4. Amend § 1090.1010 by redesignating paragraph (a)(2)(iii) as (a)(2)(iv) and adding a new paragraph (a)(2)(iii) to read as follows:

§ 1090.1010 Designation requirements for gasoline and regulated blendstocks.

(a) * * *

(2) * * *

(iii) If the CBOB is excluded from the special regulatory treatment for ethanol under § 1090.215(b)(3)(ii), Low-RVP Summer CBOB.

* * * * *

■ 5. Amend § 1090.1110 by redesignating paragraph (b)(2)(i)(C) as (b)(2)(i)(D) and adding a new paragraph (b)(2)(i)(C) to read as follows:

§ 1090.1110 PTD requirements for gasoline, gasoline additives, and gasoline regulated blendstocks.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) ''Low-RVP CBOB. This product does not meet the requirements for summer reformulated gasoline.''

* * * * *

[FR Doc. 2023–04375 Filed 3–3–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–43; RM–11944; DA 23–92; FR ID 127701]

Television Broadcasting Services Coos Bay, Oregon

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Sinclair Eugene License, LLC (Petitioner), the licensee of KCBY–TV, channel 11, Coos Bay, Oregon. The Petitioner requests the substitution of channel 34 for channel 11 at Coos Bay in the Table of Allotments.

DATES: Comments must be filed on or before April 5, 2023 and reply comments on or before April 20, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Paul Cicelski, Esq., Lerman Senter, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov* or (202) 418–1647.

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the Station has a long history of severe reception problems as a result of its operation on a VHF channel, and that the Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers with most antennas performing very poorly on high VHF channels. According to the Petitioner, KCBY–TV has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other local stations.'' Petitioner asserts that its channel substitution proposal will serve the public interest by resolving the over-the-air reception problems and enhancing viewer reception in KCBY–TV's service area. An analysis provided by the Petitioner using the Commission's *TVStudy* software tool indicates that all but approximately 392 persons will continue to receive the signal, a number the Petitioner asserts is *de minimis.* Furthermore, in addition to maintaining full coverage of its community of license, Petitioner notes that the proposed change to channel 34 will result in a predicted increase in service to more than 11,000 persons.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–43; RM–11944; DA 23–92, adopted

February 1, 2023, and released February 1, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 (j), amend the Table of TV Allotments under Oregon by revising the entry for Coos Bay to read as follows:

§ 73.622 Table of TV Allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Oregon	
* * * * *	
Coos Bay	22, 34
* * * * *	

[FR Doc. 2023–03588 Filed 3–3–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230224–0052]

RIN 0648–BL94

Atlantic Highly Migratory Species; Bluefin Tuna (BFT) General Category Restricted-Fishing Days (RFDs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to set Atlantic BFT General category RFDs for parts of the 2023 and 2024 fishing years. Specifically, when the General category fishery is open, this proposed rule would set RFDs for every Tuesday, Friday, and Saturday from July 1, 2023 through November 30, 2023 and every Tuesday and Friday from December 1, 2023 through March 31, 2024. On an RFD, Atlantic Tunas General category permitted vessels may not fish for (including catch-and-release or tag-and-release fishing), possess, retain, land, or sell BFT. On an RFD, Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement also are subject to these restrictions that preclude fishing commercially for BFT under the General category restrictions and retention limits, but such vessels may still fish for, possess, retain, or land BFT when fishing recreationally under applicable HMS Angling category rules.

DATES: Written comments must be received by April 5, 2023. NMFS will hold a public hearing via conference call and webinar for this proposed rule on March 23, 2023, from 2 p.m. to 4 p.m. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0016, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov and enter* ''NOAA–NMFS–2023–0016'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call and webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Erianna Hammond, *erianna.hammond@noaa.gov,* or Larry Redd, Jr., *larry.redd@noaa.gov,* at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Erianna Hammond, *erianna.hammond@noaa.gov,* or Larry Redd, Jr., *larry.redd@noaa.gov,* at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States, among the various domestic fishing categories per the allocations established in the 2006 Consolidated

HMS FMP and its amendments. Section 635.23 specifies the retention limit provisions for Atlantic Tunas General category permitted vessels and HMS Charter/Headboat permitted vessels, including regarding RFDs.

RFDs are used as an effort control to ensure that BFT quotas and subquotas are not exceeded. As described in § 635.27(a), the current baseline U.S. quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 710.7 mt. Each of the General category time periods (January through March, June through August, September, October through November, and December) are allocated a portion of the annual General category quota.

Background

NMFS first established the regulatory authority to set ''no fishing'' days in a 1995 rule (60 FR 38505, July 27, 1995) as an available effort control that could be used to extend the General category time period subquotas while providing additional inseason management flexibility with regard to quota use and season length. An RFD is a day, established ahead of time through a schedule published in the **Federal Register**, on which NMFS sets the BFT retention limit at zero for certain categories of permit holders. Specifically, on an RFD, vessels permitted in the Atlantic Tunas General category are prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT (§ 635.23(a)(2)). RFDs also apply to HMS Charter/Headboat permitted vessels to preclude fishing commercially under General category restrictions and retention limits on those days but do not preclude such vessels from recreational fishing activity under applicable Angling category regulations, including catch-and-release and tag-and-release fishing (§ 635.23(c)(2)).

NMFS may waive previously scheduled RFDs under certain circumstances. Consistent with § 635.23(a)(4), NMFS may waive an RFD by adjusting the daily BFT retention limit from zero up to five on specified RFDs after considering the inseason adjustment determination criteria at § 635.27(a)(7). Considerations include, among other things, review of dealer reports, daily landing trends, and the availability of BFT on fishing grounds. NMFS would announce any such waiver by filing a retention limit adjustment with the Office of the Federal Register for publication. Such adjustments would be effective no less than 3 calendar days after the date of filing for public inspection with the Office of the Federal Register. NMFS also may waive previously designated RFDs effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26(a). NMFS would not modify the previously scheduled RFDs during the fishing year in other ways (such as changing an RFD from one date to another or adding RFDs).

Due to increased BFT landings rates in the General category in 2019 and 2020 and numerous requests from members of the Atlantic HMS Advisory Panel, General category participants, and Atlantic tunas dealers, NMFS resumed the use of RFDs in 2021 for the first time since 2007 (86 FR 25992, May 12, 2021; 86 FR 43421, August 9, 2021). In 2022, because the use of RFDs in 2021 succeeded in extending fishing opportunities through a greater portion of the relevant General category time periods and the fishing season overall, consistent with management objectives for the fishery, NMFS implemented RFDs on every Tuesday, Friday, and Saturday from July 1 through November 30 while the fishery was open (87 FR 12643, March 7, 2022; 87 FR 33056, June 1, 2022). Similar to the 2021 and 2022 rulemakings, NMFS is proposing an RFD schedule to extend fishing opportunities through a greater portion of the relevant General category time periods and the fishing season overall, consistent with management objectives for the fishery. Based on comments received on the 2022 rulemaking and on comments received throughout 2022, as described below, NMFS is also proposing to extend the use of RFDs to the December 2023 and January through March 2024 time periods.

Proposed RFD Schedule

In this proposed rule, NMFS proposes to schedule RFDs every Tuesday, Friday, and Saturday from July 1, 2023 through November 30, 2023 and every Tuesday and Friday from December 1, 2023 through March 31, 2024, while the fishery is open. On these designated RFDs, persons aboard vessels permitted in the General category would be prohibited from fishing for (including catch-and-release and tag-and-release fishing), possessing, retaining, landing, or selling BFT. Persons aboard HMS Charter/Headboat permitted vessels with a commercial sale endorsement also would be prohibited from fishing commercially for BFT. Persons aboard all HMS Charter/Headboat permitted vessels (including those with a commercial sale endorsement) could fish recreationally for BFT under the applicable Angling category restrictions and retention limits.

From July 1 through November 30, 2023, NMFS is proposing the same weekly schedule as the 2021 and 2022 RFD schedule (*i.e.,* every Tuesday, Friday, and Saturday). Unlike in 2021 and 2022, NMFS is also proposing to extend RFDs to the ''winter'' fishery (*i.e.,* the December and January through March time periods). Specifically, from December 1, 2023 through March 31, 2024, NMFS proposes two RFDs per week (*i.e.,* every Tuesday and Friday) while the fishery is open. This proposed schedule and extension is based on general feedback provided by members of the Atlantic HMS Advisory Panel, General category participants, and Atlantic tunas dealers in 2022; a review of average daily landings rate data for recent years; a review of past years' RFD schedules (including the most recent 2022 RFD schedule); and a review of past closure dates prior to RFDs being set in 2021. Considering that information, NMFS believes that a schedule of RFDs from July 2023 through March 2024 should continue to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods. In the July through November time periods, the schedule would allow for 2-consecutive 2-day periods each week (Sunday-Monday; Wednesday-Thursday) for BFT product to move through the market and allow for some commercial fishing activity each weekend (Sunday). In the December and January through March time periods it would allow for extended fishing opportunities while pacing the BFT landings over a greater portion of the General category time periods.

In 2022, NMFS received some comments suggesting an increase from 3 to 4 RFDs during the July through November time periods. Based on the landings data, if NMFS were to consider an additional day to the current schedule, Sunday would appear to be the best fit because it has the highest landings rates of the remaining days (*i.e.,* Sunday, Monday, Wednesday, and Thursday). In 2022 after the final RFD schedule published, NMFS received requests to establish a weekly schedule consisting of 3 RFDs in a row such as Thursday, Friday, and Saturday. These requests stated that a block of days would better assist the BFT product to move through the market, assist with enforcement, and assist the industry

with 3 consecutive days off. NMFS is not proposing either requested schedule at this time because NMFS believes it would provide less flexibility for fishermen and could be disruptive to tournaments and businesses that are planning for 2023 based on what occurred in 2022. However, in this **Federal Register** proposed rule, NMFS requests public comments on:

- Whether July through November RFDs should be established for 4 days per week instead of 3, and if so, what the fourth day should be, and
- Whether July through November RFDs should be scheduled for 3 or 4 consecutive days and if that schedule would be less disruptive than the proposed schedule that allows for 2-consecutive 2-day periods each week (Sunday–Monday; Wednesday–Thursday) for BFT product to move through the market.

Additionally, in 2022, NMFS received requests from some winter fishery participants to extend RFDs into both the December and the January through March time periods. These dealers and General category participants suggested that establishing RFDs in these General category time periods would assist in facilitating entry of BFT product to the market while also allowing rest days for commercial BFT fishermen. Over the last 6 years, closure of the December time period has been necessary in 2017, 2020, 2021, and 2022, with the fishery remaining open through the end of the month in 2018 and 2019. Similarly, over the last 6 years, closure of the January through March time period has been necessary every year for 2017 through 2022. Based on these requests and to extend fishing opportunities throughout the December and January through March time periods, NMFS proposes RFDs for the December 2023 and the January through March 2024 time periods. NMFS is proposing only Tuesday and Friday as RFDs for these time periods because these days have the highest landings rates and because of concerns that 3 or more days per week may be too restrictive given the potential for inclement winter weather. In this proposed rule, NMFS specifically requests public comment on how many RFDs per week would be appropriate during these time periods and which days may be most beneficial.

Under existing regulations, based on consideration of regulatory criteria at § 635.27(a)(7), NMFS may waive certain RFDs consistent with § 635.23(a)(4), either by adjusting the retention limit upwards on a previously-scheduled RFD or by waiving an RFD to allow recreational fishing under the Angling category restrictions and retention limits when the General category closes. Once the schedule is set, however, NMFS would not modify RFDs in other ways (*e.g.,* switching days or adding RFDs).

Request for Comments

NMFS is proposing a schedule of RFDs for every Tuesday, Friday, and Saturday from July 1, 2023, through November 30, 2023. Additionally, NMFS is proposing a schedule of RFDs for every Tuesday and Friday from December 1, 2023 through March 31, 2024. NMFS is requesting comments on this proposed RFD schedule. NMFS is also specifically requesting comments on: (1) whether July through November RFDs should be 4 days per week instead of 3, and if so, what the fourth day should be; (2) whether July through November RFDs should be scheduled for 3 or 4 consecutive days and if that schedule would be less disruptive than the proposed schedule that allows for 2-consecutive 2-day periods each week (Sunday–Monday; Wednesday–Thursday) for BFT product to move through the market; and (3) whether the December through March RFD 2 day per week schedule is appropriate and which days would be the most beneficial for these time periods. Comments on this proposed rule may be submitted via *https://www.regulations.gov* or at a public conference call and webinar. NMFS solicits comments on this action by April 5, 2023 (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a public hearing via conference call and webinar for this proposed action. Requests for sign language interpretation or other auxiliary aids should be directed to Erianna Hammond at *Erianna.hammond@noaa.gov* or 301–427–8503, at least 7 days prior to the meeting.

The conference call and webinar will take place on March 23, 2023 from 2:00 to 4:00 p.m. Information for registering and accessing the webinars can be found at *https://www.fisheries.noaa.gov/action/proposed-restricted-fishing-days-atlantic-bluefin-tuna-fishery-parts-2023-and-2024.*

The public is reminded that NMFS expects participants at conference calls and webinars to conduct themselves appropriately. At the beginning of each conference call and webinar, the moderator will explain how the conference call and webinar will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the conference call and webinar so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the conference calls and webinars.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

Section 603(b)(1) of the RFA requires agencies to describe the reasons why the action is being considered. The purpose of this proposed rulemaking is, consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, to potentially set a schedule of BFT RFDs for parts of the 2023 and 2024 fishing years as an effort control for the General category quota and to extend General category fishing opportunities through a greater portion of the General category time period subquotas. Implementation of the proposal would further the management goals and objectives in the 2006 Consolidated HMS FMP and its amendments.

Section 603(b)(2) of the RFA requires agencies to state the objectives of, and legal basis for, the proposed action. The objective of this proposed rulemaking is to set a schedule of BFT RFDs for parts of the 2023 and 2024 fishing year to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods (similar to the 2022 RFD schedule). The legal basis for the proposed rule is the Magnuson-Stevens Act and ATCA.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS established a small business size standard of $11

million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210), which includes for-hire (charter/party boat) fishing entities. The SBA has defined a small entity under the scenic and sightseeing transportation (water) sector as one with average annual receipts (revenue) of less than $14.0 million. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they had average annual receipts of less than their respective sector's standard of $11 million and $8 million. The 2021 total ex-vessel annual revenue for the BFT fishery was $11.8 million. Since a small business is defined as having annual receipts not in excess of $11.0 million, each individual BFT permit holder would fall within the small entity definition. The numbers of relevant annual Atlantic Tunas or Atlantic HMS permits as of October 2022 are as follows: 2,630 General category permit holders and 4,175 HMS Charter/Headboat permit holders, of which 1,873 hold HMS Charter/Headboat permits with a commercial sale endorsement.

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping, and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements. This proposed rule would set a schedule of RFDs for parts of 2023 and 2024 as an effort control for the General category.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

Under section 603(c) of the RFA, agencies must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Specifically, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives to assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it, because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small entities. Regarding the third category, NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking.

This proposed rule would not change the U.S. BFT quotas or implement any new management measures not previously considered under the 2006 Consolidated HMS FMP and its amendments. NMFS proposes continuation of the use of RFDs for the General category for parts of 2023 and 2024 to provide the regulated community the opportunity to comment on the proposed RFD schedule. Under the regulations, when a General category time period subquota is reached or projected to be reached, NMFS closes the General category fishery. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent time period or until such date as specified. In recent years, these closures, if needed, have generally occurred toward the end of a time period. NMFS notes that market-based factors may affect the length of time before any particular time period closes, but believes that RFDs are still needed to provide a pre-scheduled, consistent approach across the fishery. According to communications with dealers and fishermen, several of the high-volume Atlantic tunas dealers in 2019, 2020, and 2022 were limiting their purchases of BFT and buying no or very few BFT (such as harpooned fish only) on certain days during the beginning portion of the June through August time period in order to extend the available quota until later in the time period given market considerations. While these actions may have lengthened the time before any particular time period was closed, there were negative impacts experienced by some General category and Charter/Headboat permitted fishermen, who could not find buyers for their BFT. In 2021, NMFS set pre-scheduled RFDs for the General category fishery on certain days (Tuesdays, Fridays, and Saturdays) from September through November to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time periods (August 9, 2021, 86 FR 43421). In 2022, NMFS set pre-scheduled RFDs for the same days from July through November (June 1, 2022, 87 FR 33056).

Table 1 shows the General category closure dates by time period for 2018 through 2022. The General category remained open for the entire duration of the June through August time period in 2018 and 2020, and of the December time period in 2018 and 2019. The October through November time period tends to close the earliest of any time period, and NMFS often receives requests to reopen that time period. Following the consideration of numerous factors (*i.e.,* daily landings rates, weather conditions, available quota, *etc.*), NMFS reopened the October through November time period in 2018 and 2020. In 2021, NMFS set RFDs for the September through November time periods, resulting in the General category fishing extending late into September and through the end of October through November time period. In 2022, NMFS set RFDs for the June through November time periods, with the first RFD established on July 1. Closure dates for 2022 were February 11, August 10, September 19, October 24, and December 10, respectively, for each time period. NMFS believes that the relatively early closure dates in 2022 were due in part to high daily landings rates when the time periods were open in the summer and fall. Based on a review of average daily landings rates, without the use of RFDs, NMFS likely would have needed to close the June through November time periods much earlier if the RFDs were not in place. These high landings rates continued into December 2022, resulting in that time period closing after 10 days, much earlier than in 2018 through 2021. The

use of RFDs in 2022 from June through November paced the landings as much as possible and extended the fishing opportunities for the June through November time periods. The current proposal to extend RFDs into December of 2023 and January through March of 2024 should similarly increase fishing opportunities throughout all time periods.

TABLE 1—GENERAL CATEGORY CLOSURE DATES BY TIME PERIOD (2018–2022)

Year	Time period				
	January through March	June through August	September	October through November	December
2018	Mar 2	Aug 31	Sept 23	Closed Oct 5; Reopened Oct 31 through Nov 2; Reopened Nov 12 through Nov 26.	Dec 31.
2019	Feb 28	Aug 8	Sept 13	Oct 13	Dec 31.
2020	Feb 24	Aug 31	Sept 27	Closed Oct 9; Reopened Oct 28–29; Reopened Nov 7–8.	Dec 14.
2021	Feb 27	Aug 4	Sept 23	Nov 30	Closed Dec 14; Reopened Dec 20–23.
2022	Feb 11	Aug 10	Sept 19	Oct 24	Dec 10.

Table 2 shows the average ex-vessel price per pound of BFT during each General category time period for 2018 through 2022 adjusted to real 2022 dollars using the Gross Domestic Product (GDP) deflator. Ex-vessel price per pound was lower for the September time period, with an average (2018 through 2022) of $6.65, and varied over the summer and fall period, with averages of $6.97 for the June through August time period and $7.03 for the October through November time period. In 2022, the average price per pound was higher for the January through March time period compared to the average price per pound during the time periods in 2021. In most time periods, the 2022 average price per pound was also higher than the 2020 average price per pound. NMFS believes that this increase in average price was in part due to the use of RFDs in 2022.

TABLE 2—AVERAGE EX-VESSEL PRICE PER POUND ($) OF BFT BY GENERAL CATEGORY TIME PERIOD (2018–2022) ADJUSTED TO REAL 2022 DOLLARS *

Year	Time period				
	January through March	June through August	September	October through November	December
2018	$8.72	$8.05	$7.59	$8.75	$11.03
2019	6.97	6.41	7.25	6.28	13.91
2020	6.93	5.56	5.86	6.27	6.44
2021 **	6.87	7.53	6.53	7.78	8.97
2022 **	8.76	7.30	6.02	6.09	7.19
2018 through 2022 average	7.65	6.97	6.65	7.03	9.51

* Adjusted using the Gross Domestic Product (GDP) Deflator.
** The October through November and December numbers do not use the 4th quarter GDP Deflator because it is not yet currently available.

Table 3 shows the number and total weight of BFT that were landed but not sold by fishermen fishing under the General category quota for 2018 through 2022. The number and weight of unsold BFT increased from 2018 through 2022 with a peak in 2020 (143 BFT and 25.8 mt) in part due to the COVID–19 pandemic, and substantial decrease in 2021 (from 143 to 12 BFT and 25.8 mt to 2.0 mt), followed by an increase in 2022 (48 BFT and 9.1 mt). NMFS believes this increase is in part due to an influx of domestically caught BFT entering the market at one time resulting in dealers limiting their purchases of BFT leading to General category participants. This situation resulted in unprecedented high landings days in several time periods and BFT fishermen having a difficult time finding buyers for landed BFT.

TABLE 3—NUMBER (COUNT) AND WEIGHT (mt) OF BFT LANDED BUT UNSOLD BY GENERAL CATEGORY PARTICIPANTS BY YEAR (2018–2022)

Year	Count	Weight (mt)
2018	14	2.6
2019	20	3.8
2020	143	25.8
2021	12	2.0
2022	48	9.1
Total	237	43.3

NMFS is proposing to establish a schedule of RFDs for parts of the 2023 and 2024 fishing years that would specify days on which fishing and sales will not occur. Specifically, for the 3 time periods from June through November, the proposed schedule allows for 2-consecutive 2-day periods each week for BFT product to move through the market while also allowing some commercial fishing activity to occur each weekend (*i.e.,* Sundays). For the December and January through March time periods, the proposed schedule would allow for extended fishing opportunity while pacing the BFT landings over a span of time. Because this schedule of RFDs would apply to all participants equally, NMFS anticipates that this schedule would

extend fishing opportunities through a greater proportion of the time periods in which they apply by spreading fishing effort out over time similar to the 2022 fishing season. Further, to the extent that the ex-vessel revenue for a BFT sold by a General or HMS Charter/Headboat permitted vessel (with a commercial endorsement) may be higher when a lower volume of domestically caught BFT is on the market at one time, the use of RFDs may result in some increase in BFT price, and the value of the General category time period subquotas could increase similar to that of 2022. Thus, although NMFS anticipates that the same overall amount of the General category quota would be landed as well as the same amount of BFT landed per vessel, there may be some positive impacts to the General category and Charter/Headboat (commercial) BFT fishery small businesses. Using RFDs may more equitably distribute fishing opportunities across all permitted vessels for longer durations within each General category time period.

If NMFS does not implement a schedule, without any other changes, it is possible that the General category could have fewer open days later in the fishing season when ex-vessel prices tend to be higher (Table 1) as observed in 2018 through 2022. Additionally, without RFDs the trends of increasing numbers of unsold BFT (Table 3) and decreasing ex-vessel prices (Table 2) from 2018 through 2020 could continue. If those trends were to continue, all active General category permit holders could experience negative economic impacts similar to 2019, 2020, and 2022 where dealers were limiting their purchases of BFT and buying no or very few BFT on certain days in order to extend the available quota.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: February 27, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–04316 Filed 3–3–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 43
Monday, March 6, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

[OMB Control No. 0503–0024]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: As part of the administration's commitment to improving customer service delivery, the Department of Agriculture has under OMB review the following Information Collection Request ''Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)'' for approval under the Paperwork Reduction Act (PRA).

DATES: *Submit comments on or before:* April 5, 2023.

ADDRESSES: Submit comments identified by Information Collection 0503–0024, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *Federal eRulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.
- *Mail:* Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Instructions: Please submit comments only and cite Information Collection 0503–0024, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation) in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ruth Brown (202–720–8958) and Levi Harrell (202–720–8681), Office of the Chief Information Officer, Information Resources Management Center, 1200 Independence Avenue SW, Washington, DC 20250 or via email to: *USDA.PRA@USDA.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Department of Agriculture will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov*. Summaries of customer research and user testing activities may be included in public-facing customer journey maps.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Action: Collection of Information.

Type of Review: Renewal and Extension.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this new collection. Department of Agriculture will provide refined estimates of burden in subsequent notices.

Average Expected Annual Number of Activities: Approximately 2,040,000 customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

Average Number of Respondents per Activity: 1 response per respondent per activity.

Annual Responses: 2,040,000.

Average Minutes per Response: 2 minutes–120 minutes, dependent upon activity.

Burden Hours: Department of Agriculture requests approximately 240,000 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at *Regulations.gov*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–04500 Filed 3–3–23; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2023]

Foreign-Trade Zone 186; Application for Production Authority; Flemish Master Weavers; (Machine-Made Woven Area Rugs); Sanford, Maine

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Waterville, Maine, grantee of FTZ 186, requesting production authority on behalf of Flemish Master Weavers (FMW), located within Subzone 186A in Sanford, Maine. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on February 28, 2023.

In 2016, the FMW facility (147 employees) received limited FTZ authority to produce machine-made woven area rugs using polypropylene and polyester yarns in privileged foreign (PF) status (19 CFR 146.41), which precludes inverted tariff benefits on those inputs (see 81 FR 51850, August 5, 2016).

In 2017, FMW requested authority to admit continuous filament polypropylene (CFPP) yarn in nonprivileged foreign (NPF) status (19 CFR 146.42) (B–28–2017, 82 FR 26434, 6/7/2017). That request was approved subject to the following restrictions: (1) the annual quantitative volume of CFPP yarn that FMW may admit into Subzone 186A under NPF status was limited to 3 million kilograms; and (2) approval was limited to an initial period of five years, subject to extension upon review (Board Order 2071, 83 FR 54709, 10/31/2018).

In 2022, in a notification proceeding, FMW requested to remove the restriction requiring admission in PF status for CFPP yarn—to which FMW's operation would otherwise be subject beginning on October 25, 2023 (upon expiration of the time-limited authority approved in Board Order 2071). See B–33–2022, 87 FR 48149, August 8, 2022. In that case, the FTZ Board decided that further review was needed in the more detailed application process to allow adequate examination of current industry conditions facing U.S. CFPP yarn and woven area rug producers.

If approved, FMW would be able to choose the duty rates during customs entry procedures that apply to machine-made woven area rugs (duty free) for the foreign-status inputs noted below. FMW would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Components and materials sourced from abroad (representing 65% of the value of the finished product) include: single and two-ply continuous filament polypropylene yarn (duty rates are 8.8% and 8% respectively). As requested, FTZ authority would be subject to a restriction limiting the annual quantitative volume of CFPP yarn that FMW may admit into Subzone 186A under NPF status to 3 million kilograms. The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

In accordance with the FTZ Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 5, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 22, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: February 28, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–04457 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–12–2023]

Approval of Expansion of Subzone 18F; Lam Research Corporation; Stockton, California

On January 9, 2023, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18F subject to the existing activation limit of FTZ 18, on behalf of Lam Research Corporation, in Stockton, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (88 FR 2323, January 13, 2023). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 18F was approved on February 28, 2023, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 18's 2,000-acre activation limit.

Dated: February 28, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–04472 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–6A001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Alaska Longline Cod Commission (''ALCC''), Application No. 10–6A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an amended Export Trade Certificate of Review (''Certificate'') to ALCC on February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

ALCC's Certificate has been amended as follows:

1. Under Export Trade, changed references of Export Product to Export Products

2. Added the following six products as Export Products within the meaning of section 325.2(j) of the Regulations (15 CFR 325.2(j)):

a. cod heads
b. cod collars
c. cod roe
d. cod chu
e. cod milt
f. ray wings

3. Changed the reference to Export Product in the following sentence:

Change ''Frozen-at-sea means that the Export Product is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.'' to ''Frozen-at-sea means that the Alaska cod is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.''

Under Export Trade in the Certificate, the Export Products are as follows:

Export Products

ALCC plans to export frozen at-sea, headed and gutted, Alaska cod (Gadus macrocephalus), also known as Pacific cod. Headed and gutted means the head and viscera are removed prior to freezing. Frozen-at-sea means that the Alaska cod is frozen on the longline catcher-processor vessel while at-sea immediately after being headed and gutted.

ALCC also plans to export byproducts of ALCC frozen-at-sea, headed and gutted Alaska cod: cod heads; cod collars; cod roe; cod chu; cod milt; and ray wings. The cod heads, cod collars, cod roe, cod chu, and cod milt are derived from parts of the Alaska cod remaining after the heading-and-gutting of the cod to produce frozen-at-sea headed and gutted Alaska cod. The ray wings are derived from various species of skate, which are caught incidentally while targeting Alaska cod.

ALCC's Membership remains the same following the amendment.

The effective date of the amended certificate is October 21, 2022, the date on which ALCC's application to amend was deemed submitted.

Dated: February 28, 2023.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2023–04461 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on certain corrosion-resistant steel products (CORE) from Taiwan to correct certain ministerial errors. The period of review is July 1, 2020, through June 30, 2021.

DATES: Applicable March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Patrick Barton or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0012 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2023, the Commerce published its *Final Results* of the 2020–2021 administrative review of the antidumping duty order on CORE from

Taiwan.[1] On February 2, 2023, Commerce disclosed its calculations to interested parties and provided interested parties with the opportunity to submit ministerial error comments.[2] On February 7, 2023, Cleveland-Cliffs Inc. (the petitioner), timely submitted ministerial error comments regarding Commerce's *Final Results*.[3] On February 10, 2023, Prosperity Tieh Enterprise, Co., Ltd. (Prosperity), a mandatory respondent in this administrative review, timely submitted ministerial error comments regarding Commerce's *Final Results*.[4] Commerce is amending its *Final Results* to correct certain ministerial errors alleged by the petitioner.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Commerce} considers ministerial.'' [5] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . . .''

Ministerial Errors

In the final results of the review, Commerce made inadvertent errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) with respect to the calculation of Prosperity's and Yieh Phui Enterprise Co., Ltd.'s (Yieh Phui) weighted-average costs and actual production quantities. Accordingly, Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), it made certain ministerial errors in the *Final Results.*

For a complete description and analysis of the specific inadvertent errors, and the petitioner's and Prosperity's ministerial error allegations, please see the accompanying Ministerial Error Allegations Memorandum.[6] The Ministerial Error Allegations Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of these ministerial errors in the calculation of the weighted-average dumping margins assigned to Prosperity and Yieh Phui in the *Final Results,* which change from 3.64 and 2.88 percent, respectively, to 3.74 and 4.89 percent, respectively.[7] Furthermore, we are revising the review-specific, weighted-average dumping margin applicable to the company not selected for individual examination (*i.e.,* Sheng Yu Steel Co., Ltd. (Sheng Yu)) in this administrative review, which is based on Prosperity's and Yieh Phui's weighted-average dumping margins.[8] We calculated Sheng Yu's weighted-average dumping margin as the weighted average of the weighted-average dumping margins determined for the two mandatory respondents where the weights are the publicly ranged quantities sold by each of the mandatory respondents.

Amended Final Results of Review

As a result of correcting these ministerial errors, Commerce determines that, for the period of July 1, 2020, through June 30, 2021, the following weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)
Prosperity Tieh Enterprise Co., Ltd	3.74
Sheng Yu Steel Co., Ltd	4.14
Yieh Phui Enterprise Co., Ltd	4.89

Disclosure

We intend to disclose the calculations performed for these amended final results to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer. Where an importer-specific antidumping duty assessment rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the period of review produced by companies included in these amended final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the weighted- average dumping margins determined in these amended final results. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and

[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021,* 88 FR 7408 (February 3, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum, ''Deadline for Ministerial Error Comments for the Final Results,'' dated February 2, 2023.

[3] *See* Petitioner's Letter, ''Certain Corrosion-Resistant Steel Products from Taiwan: Petitioner's Ministerial Error Comments,'' dated February 7, 2023.

[4] *See* Prosperity's Letter, ''Corrosion-Resistant Steel Products from Taiwan, 7/1/2020–6/30/2021 Administrative Review, Case No. A–583–856: Ministerial Error Comments,'' dated February 10, 2023.

[5] *See* 19 CFR 351.224(f).

[6] *See* Memorandum, ''Ministerial Error Allegations,'' dated concurrently with this notice (Ministerial Error Allegations Memorandum).

[7] *Id.; see also Final Results,* 88 FR at 7409.

[8] In the case of two mandatory respondents, our practice is to calculate: (A) a weighted average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014–2016,* 82 FR 31555, 31556 (July 7, 2017). We have applied that practice here. *See* Memorandum, ''Calculation of the All-Others' Rate in the Amended Final Results,'' dated concurrently with this notice.

for future deposits of estimated duties, where applicable.[9]

Normally, Commerce would issue appropriate assessment instructions to CBP 35 days after the date of publication of the amended final results of this review in the **Federal Register**, to liquidate shipments of subject merchandise produced and exported by Yieh Phui entered, or withdrawn from warehouse, for consumption during the July 1, 2020 through June 30, 2021 period of review. However, on February 15, 2023, the U.S. Court of International Trade (the Court) enjoined liquidation of entries produced and exported by Yieh Phui, that are subject to the *Final Results*.[10] Accordingly, Commerce will not instruct CBP to assess antidumping duties on those enjoined entries pending resolution of the associated liquidation.

For Prosperity and Sheng Yu, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after February 3, 2023, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 3.66 percent established in the less-than-fair-value investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

The amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: February 28, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–04498 Filed 3–3–23; 8:45 am]

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[9] *See* section 751(a)(2)(C) of the Act.

[10] The Court issued a statutory injunction under CIT case number 16–00138 (April 8, 2020).

[11] *See Corrosion-Resistant Steel Products from Taiwan: Notice of Court Decision Not in Harmony with Final Determination of Antidumping Duty Investigation and Notice of Amended Final Determination of Investigation,* 84 FR 6129 (February 26, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on light-walled welded rectangular carbon steel tubing (LWR tubing) from Taiwan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order on LWR tubing from Taiwan.

DATES: Applicable March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, Commerce published the AD order on LWR tubing from Taiwan.[1] On July 1, 2022, Commerce initiated,[2] and the ITC instituted,[3] a sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping, and, therefore, notified the ITC of the magnitude of the margins of dumping rates likely to prevail should the *Order* be revoked.[4] On February 28, 2023, the ITC published its determination that revocation of the

[1] *See Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,* 54 FR 12467(March 27, 1989) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 39459 (July 1, 2022).

[3] *See Light-Walled Rectangular Pipe and Tube from Taiwan; Institution of a Five-Year Review,* 87 FR 39562 (July 1, 2022).

[4] *See Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 64437 (October 25, 2022), and accompanying Issues and Decision Memorandum.

Order would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are LWR tubing of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. This merchandise is classified under subheading 7306.61.5000 of the U.S. Harmonized Tariff Schedule (HTSUS). It was formerly classified under subheading 7306.60.5000. The HTSUS subheadings are provided for convenience and customs purposes only. The written description remains dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act, and 19 CFR 351.218(f)(4).

[5] *See Light-Walled Rectangular Pipe and Tube from Taiwan,* 88 FR 12698 (February 28, 2023)*; see also Light-Walled Rectangular Pipe and Tube from Taiwan:* Investigation No. 731–TA–410 (Fifth Review), USITC Pub. 5410 (February 2023).

Dated: February 28, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–04449 Filed 3–3–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce published in the **Federal Register** the *Order* on hardwood plywood from China.[1] On December 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order,* in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 13, 2022, Commerce received a timely notice of intent to participate from the Coalition for Fair Trade in Hardwood Plywood (Coalition), a domestic interested party.[3] The Coalition claimed interested party status under section 771(9)(C) of the Act as a group of domestic producers engaged in the production of hardwood plywood in the United States.

On January 3, 2023, Commerce received a timely and adequate substantive response from the Coalition.[4] We received no substantive responses from any other interested parties, including the Government of China, nor was a hearing requested. On January 25, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* is hardwood and decorative plywood, and certain veneered panels. For a complete description of the scope, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of countervailable subsidies, the net countervailable subsidy rates that are likely to prevail, and the nature of the subsidies. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[3] *See* Coalition's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated December 13, 2022.

[4] *See* Coalition's Letter, ''Substantive Response to the Notice of Initiation,'' dated January 3, 2023 (Coalition's Substantive Response).

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 1, 2022,'' dated January 25, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Shandong Dongfang Bayley Wood Co., Ltd[7]	194.90
Linyi Sanfortune Wood Co., Ltd	22.98
All Others	22.98
Non-cooperative Companies[8]	194.90

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: February 27, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–04454 Filed 3–3–23; 8:45 am]

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[7] Commerce found that Shandong Dongfang Bayley Wood Co., Ltd. is cross-owned with Linyi Yinhe Panel Factory, a producer of subject merchandise. Commerce also applied Shandong Dongfang Bayley Wood Co., Ltd.'s rate to Linyi Yinhe Panel Factory. *See Order,* 83 FR at 516.

[8] Fifty-nine non-cooperative companies received a subsidy rate based on facts available with an adverse inference. *See Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 53473, 53474 (November 16, 2017).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC811]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 21, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/1464733535707899991.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss and identify a preferred alternative for the Atlantic Salmon Aquaculture Framework. They will also review and recommend revisions, if necessary, to the draft goals and objectives for the Northern Edge Habitat/Scallop Management Framework. The Advisory Panel will also discuss an Exempted Fishing Permit request disapproved by NOAA Fisheries within the Great South Channel Habitat Management Area, as a follow-up to prior Council review of the final report for an earlier phase of the work. Also on the agenda, staff will brief the Advisory Panel on recent coordination with BOEM and NOAA related to offshore wind leasing in the Gulf of Maine. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–04515 Filed 3–3–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC784]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Bluepoint Wind, LLC (BPW) to incidentally harass marine mammals during marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0537 and associated export cable route (ECR) area.

DATES: This Authorization is effective from March 1, 2023 through February 29, 2024.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-bluepoint-wind-llc-marine-site-characterization-surveys-new.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 18, 2022, NMFS received a request from BPW for an IHA to take marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area. Following NMFS' review of the application, the application was deemed adequate and complete on October 25, 2022. BPW's request is for take of small numbers of 15 species (16 stocks) of marine mammals by Level B harassment only. Neither BPW nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

Overview

BPW plans to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0537 and associated ECR area.

The planned marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. At least two survey vessels will operate as part of the planned surveys with a maximum of two nearshore (<20 meters (m)) vessels and a maximum of two offshore (≥20 m) vessels operating concurrently. Underwater sound resulting from BPW's marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The survey is planned to begin as early as March 1, 2023 and estimated to require 432 survey days across a maximum of two nearshore and two offshore vessels operating concurrently within a single year. A ''survey day'' is defined as a 24-hour (hr) activity period in which active acoustic sound sources are used. It is expected that each vessel would cover approximately 170 kilometers (km) per day based on the applicant's expectations regarding data acquisition efficiency, and there is up to 23,191 km of track line of survey effort planned. The IHA would be effective for one year from the date of issuance.

Specific Geographic Region

BPW's survey activities would occur in coastal waters off of New York and New Jersey in the New York Bight, specifically within Lease Area OCS–A 0537 and the ECR area (Figure 1). Water depths in the OCS Lease Area are between 50 m and 60 m. Water depths in the ECR area are between 5 m and 60 m.

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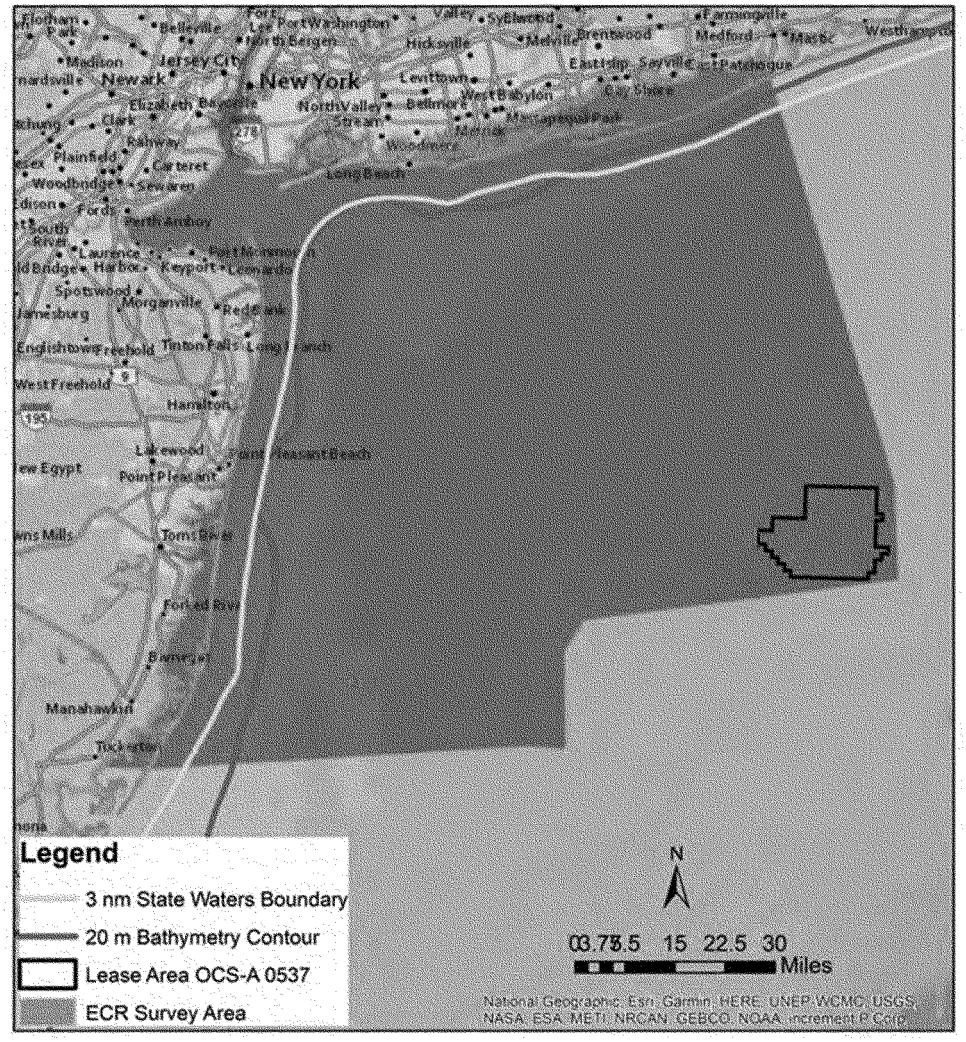

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Figure 1. Survey Area

Detailed Description of Specified Activity

BPW plans to conduct HRG survey operations, including multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys will include the use of seafloor mapping equipment with operating frequencies above 180 kilohertz (kHz) (*e.g.,* side-scan sonar (SSS), multibeam echosounders (MBES)); gradiometers that have no acoustic output; non-impulsive, parametric sub-bottom profilers (SBPs) with narrow beamwidth; and medium-penetration sub-bottom profiling (SBP) equipment (*e.g.,* boomers and sparkers) with operating frequencies below 180 kilohertz (kHz). No deep-penetration SBP surveys (*e.g.,* airgun or bubble gun surveys) will be conducted.

There are two possible options for BPW's surveys in the Lease area using a sparker system (Dual Geo-Spark 2000X). Under Option One, one Dual Geo-Spark 2000X would be used at a minimum of 30 m line spacing with tieline spacing of 500 m for a total survey distance of 9,923 km in the Lease Area. Under Option Two, up to four Dual Geo-Spark 2000X would be towed to conduct an Ultra High Resolution 3-dimensional (UHR3D) survey. The sparkers would be fired sequentially such that only one is fired at a time with 0.33 seconds between shots. The sparkers would be physically spaced 25 m apart for a total spread of 75 m. The tracklines would be similar to those for the single sparker; however, they would be spaced a minimum of 43.75 m apart with tielines spaced at 500 m for a shorter total survey distance of 6,814 km. Since BPW may use either method, this analysis is based on the more impactful of the two options (Option 1), which has the larger total line-km.

In the ECR area, either a boomer or sparker will be used. Regardless of which system is used, BPW plans to conduct the survey with a minimum of 30 m line spacing and tielines spaced at 500 m intervals in Federal waters through potential cable corridors and at a minimum of 15 m line spacing and tielines spaced at 500 m in State waters for a total of 13,268 km of combined tracklines and tielines.

Further detail regarding the planned HRG surveys is provided in the **Federal Register** notice for the proposed IHA (88 FR 2325; January 13, 2023). Since that time, no changes have been made to the planned HRG survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for additional, detailed description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to BPW was published in the **Federal Register** on January 13, 2023 (88 FR 2325). That notice described, in detail, BPW's planned activities, the marine mammal species that may be affected by the activities, and the

anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

NMFS received ten comment letters from private citizens. All of these expressed general opposition to issuance of the IHA or to the underlying associated activities. We reiterate here that NMFS' proposed actions concern only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the surveys themselves, or to wind energy development more generally. Further, NMFS does not have discretion regarding issuance of requested incidental take authorizations pursuant to the MMPA, assuming (1) the total taking associated with a specified activity will have a negligible impact on the affected species or stock(s); (2) the total taking associated with a specified activity will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (not relevant here); (3) the total taking associated with a specified activity is small numbers of marine mammals of any species or stock; and (4) appropriate mitigation, monitoring, and reporting of such takings are set forth, including mitigation measures sufficient to meet the standard of least practicable adverse impact on the affected species or stocks. Many of these comments received request that NMFS not issue any of the IHAs and/or express disdain for wind energy development generally, but without providing information relevant to NMFS' decisions. We do not specifically address comments expressing general opposition to activities related to wind energy development.

Five of these letters provided general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development-related activities. However, the commenters did not provide any specific information supporting these concerns. Therefore, we refer those commenters to the analyses herein, and do not specifically address these comments.

Additionally, NMFS received letters from two non-governmental organizations, Responsible Offshore Development Alliance (RODA) and Friends of Animals (FoA). All substantive comments, and NMFS' responses, are provided below, and all letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-bluepoint-wind-llc-marine-site-characterization-surveys-new*). Please review the letters for full details regarding the comments and underlying justification.

Comment 1: RODA states that, to their knowledge, there are no resources easily accessible to the public to understand what authorizations are required for each of these activities (pre-construction surveys, construction, operations, monitoring surveys, etc.). RODA recommends that NMFS improve the transparency of this process and move away from what it refers to as a ''segmented phase-by-phase and project-by-project approach to IHAs.''

Response: The MMPA, and its implementing regulations, allows, upon request, the incidental take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. NMFS responds to these requests by authorizing the incidental take of marine mammals if it is found that the taking would be of small numbers, have no more than a ''negligible impact' on the marine mammal species or stock, and not have an ''unmitigable adverse impact'' on the availability of the species or stock for subsistence use. NMFS emphasizes that an IHA does not authorize the activity itself but authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to the applicant, BPW, and the specified activity described in their application and making necessary findings on the basis of what was provided in their application. The authorization of BPW's activity (note, not the authorization of takes incidental to that activity) is not within the jurisdiction of NMFS. NMFS refers RODA to the Permitting Dashboard for Federal Infrastructure Projects for further information on timelines and proposed authorizations planned for application for each of these activities: *https://www.permits.performance.gov/*.

NMFS is required to consider applications upon request. To date, NMFS has not received any joint applications. While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas (85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

Comment 2: RODA expressed concern regarding the potential for increased uncertainty in estimates of marine mammal abundance resulting from wind turbine presence during aerial surveys and potential effects of NMFS' ability to continue using current aerial survey methods to fulfill its mission of precisely and accurately assessing protected species.

Response: NMFS has determined that offshore wind development projects may impact several surveys carried out by its Northeast Fisheries Science Center (NEFSC), including aerial surveys for protected species. NEFSC has developed a Federal survey mitigation program to mitigate the impacts to these surveys, and is in the early stages of implementing this program. However, this impact is outside the scope of analysis related to the authorization of take incidental to BPW's specified activity under the MMPA.

Comment 3: RODA expressed concerns with the high amount of increased vessel traffic associated with the Offshore Wind (OSW) projects throughout the region in areas transited or utilized by certain protected resources, as well as concern for vessel noise and increased risk for vessel strikes.

Response: BPW did not request authorization for take incidental to vessel traffic during BPW's marine site characterization survey. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. For this IHA, NMFS did not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If BPW were to strike a marine mammal with a vessel, this would be an unauthorized take and be in violation of the MMPA. This gives BPW a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. BPW proposed a very conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to North Atlantic right whales. Section 4(l) in the IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operation protocols and monitoring. NMFS takes seriously the risk of vessel strike and has

prescribed measures sufficient to avoid the potential for ship strike to the extent practicable. NMFS has required these measures despite a very low likelihood of vessel strike; vessels associated with the survey activity will add a discountable amount of vessel traffic to the specific geographic region and, furthermore, vessels towing survey gear travel at very slow speeds (*i.e.,* roughly 4–5 knots (kn) (7.41–9.26 km/hour)).

To date, NMFS is not aware of any site characterization vessel from surveys reporting a vessel strike within the United States. When considered in the context of low overall probability of any vessel strike by BPW vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid ship strike. These measures are described fully in the Mitigation section below, and include, but are not limited to: training for all vessel observers and captains, daily monitoring of North Atlantic right whale Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for situational awareness regarding North Atlantic right whale presence in the survey area, communication protocols if whales are observed by any BPW personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

The potential for impacts related to an overall increase in the amount of vessel traffic due to OSW development is separate from the aforementioned analysis of potential for vessel strike during BPW's specified survey activities.

Comment 4: RODA defers to the Marine Mammal Commission's previous comments on the matter of effects on marine mammals from offshore wind development, expressing that ''they are more knowledgeable on impacts of pile driving and acoustics to marine mammals''.

Response: In response to RODA's deferral to the Marine Mammal Commission, the Commission, the agency charged with advising Federal agencies on the impacts of human activity on marine mammals, has questioned in its previous public comment whether incidental take authorizations are even necessary for surveys utilizing HRG equipment (*i.e.,* take is unlikely to occur), and has subsequently informed NMFS that they would no longer be commenting on such actions, including BPW's activity described herein. Additionally, comments related to pile driving and OSW construction are outside the scope of this IHA and, therefore, are not discussed.

Comment 5: RODA defers to the September 9, 2020 letter submitted by seventeen Environmental NRGs and echoes their concerns.

Response: NMFS refers RODA to the **Federal Register** notice 85 FR 63508 (October 8, 2020) for previous responses to the Environmental NGOs' previous letter of which RODA references and defers expertise to.

Comment 6: RODA expressed concern that negative impacts to local fishermen and coastal communities as a result of a potentially adverse impact to marine mammals (*e.g.,* vessel strike resulting in death or severe injury) were not mentioned nor evaluated in ''the IHA request for this project''. Private Citizens and RODA also emphasized concern about the alleged lack of adequate analysis of individual and cumulative impacts to marine mammals, RODA noting existing fishery restrictions as a result of other North Atlantic right whale protections.

Response: Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.,* fisheries) or coastal communities from issuance of an ITA. Nevertheless, as detailed in the proposed IHA notice and in our response to comment 3, NMFS has analyzed the potential for adverse impacts such as vessel strikes to marine mammals, including North Atlantic right whales, as a result of BPW's planned site characterization survey activities and determined that no serious injury or mortality is anticipated. In fact, as discussed in the Negligible Impact Analysis and Determination section, later in this document, no greater than low-level behavioral harassment is expected for any affected species. For North Atlantic right whale in particular, it is considered unlikely, as a result of the required precautionary shutdown zone (*i.e.,* 500 m versus the estimated maximum Level B harassment zone of 141 m), that the authorized take would occur at all. Thus, NMFS would also not anticipate the impacts RODA raises as a result of issuing this IHA for site characterization survey activities to BPW.

In regards to cumulative impacts, neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, BPW was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site

characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by BPW have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of BPW's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 83 FR 28808, June 21, 2018; 83 FR 36539, July 30, 2018; 86 FR 26465, May 10, 2021), which are similar to those planned by BPW under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment 7: RODA expressed interest in understanding the outcome if the number of actual takes exceed the number authorized during construction of an offshore wind project (*i.e.,* would the project be stopped mid-construction or operation), and how offshore wind developers will be held accountable for impacts to protected species such that impacts are not inadvertently assigned to fishermen, should they occur. Lastly, RODA maintains that the OSW industry must be accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks.

Response: It is important to recognize that an IHA does not authorize the activity but authorizes take of marine mammals incidental to the activity. As described in condition 3(b) and (c) of the IHA, authorized take, by Level B harassment only, is limited to the species and numbers listed in Table 1 of the final IHA, and any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of the IHA. As described in condition 4(k)(v), shutdown of acoustic sources is required upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the Level B harassment zone.

It is unclear why RODA would be concerned that the OSW developers are responsible for their own impacts and ''the burdens of those are not also assigned to fishermen''. Fishing impacts generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact. In contrast, the pathway by which impacts occur incidental to construction or site characterization survey activities, such as those planned by BPW here, is primarily acoustic in nature. Regardless, NMFS reiterates that this IHA does not authorize take incidental to construction activities, but site characterization survey activities, and any take beyond that authorized would be in violation of the MMPA. It is BOEM's responsibility as the permitting agency to make decisions regarding ceasing BPW's overall offshore wind development activities, not NMFS. If the case suggested by RODA does occur, NMFS would work with BOEM and BPW to determine the most appropriate means by which to ensure compliance with the MMPA. The impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are indeed managed separately from those of non-commercial fishing activities such as offshore wind site characterization surveys (MMPA section 118).

Comment 8: RODA urges NMFS to use the best available science including the most comprehensive models for estimating marine mammal take and developing robust mitigation measures. Additionally, RODA encourages NMFS to evaluate the proposed IHA with the best available science.

Response: NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking.

NMFS considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing BIAs and densities provided by Roberts *et al.* (2021). To limit the potential severity of any possible behavioral disruptions, NMFS has prescribed a robust suite of mitigation measures, including extended distance shutdowns for North Atlantic right whale, that are expected to further reduce the duration and intensity of acoustic exposure. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Lastly, as we stated in the notice of proposed IHA (88 FR 2325; January 13, 2023), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 10: RODA and FOA insist that NMFS must consider whether authorization of additional OSW related activities should be allowed, given the recent whale strandings in the area. FOA and private citizens additionally urge NMFS to postpone any OSW activities until NMFS determines effects of all OSW activities on marine mammals in the region, and determines that the recent whale deaths are not related to OSW actions.

Response: A moratorium or stop to additional OSW related activities due to the recent whale deaths is not within NMFS jurisdiction. BOEM is the agency with the authority to approve or disapprove a developer's Site Assessment Plan. NMFS authorizes take of marine mammals incidental to surveys but does not authorize the surveys. Therefore, while NMFS has the authority to modify, suspend, or revoke an IHA if the IHA holder fails to abide by the conditions prescribed therein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines that (1) the authorized taking is having or is likely to have more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, it is not within NMFS jurisdiction to impose a moratorium on offshore wind development or to require

surveys to cease on the basis of unsupported speculation.

Currently, there are active ''Unexplained Mortality Events'' (UME's) for both humpback whales and North Atlantic right whales in the areas of the recent stranding's. These UME's were both declared in 2017. See further discussion of this in the Negligible Impact Analysis and Determination section later in the notice.

Additionally, marine site characterization surveys have an extremely low risk of whale related injury or death. As mentioned above in *Comment 3,* while NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from BPW's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable.

The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA) or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding North Atlantic right whales sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 km/hour) or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

NMFS reiterates that use of the planned sources is not expected to have any potential to cause injury of any species even in the absence of mitigation. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones and shutdown measures) discussed below and in the Mitigation section of this notice further strengthens the conclusion that injury is not a reasonably anticipated outcome of the survey activity. Nevertheless, there are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (88 FR 2325; January 13, 2023), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Shutdown Zone while geophysical survey equipment is operational. There is no exemption for the shutdown requirement for North Atlantic right whales and ESA-listed species.

The best available science indicates that Level B harassment, or disruption of behavioral patterns, may occur. No mortality or serious injury is expected to occur as a result of the planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity. Authorization of mortality and serious injury may not occur via IHAs, only within Incidental Take Regulations (ITRs), and such authorization was neither requested nor proposed. NMFS notes that in its history of authorizing take of marine mammals, there has never been a report of any serious injuries or fatalities of a marine mammal related to the site characterization surveys.

NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity. We also refer to the GARFO 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect ESA-listed marine mammal species, *i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality. That document is found here: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation.*

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular

study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' US Atlantic and Gulf of Mexico SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea— Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	338 (0; 332; 2020)	0.7	8.1
Family Balaenopteridae						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic Stock	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia Stock	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal Stock	-/-, N	21,968 (0.31; 17,002; 2016).	170	10.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic Stock	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic Stock	-/-, N	39,215 (0.3; 30,627; 2016).	306	29
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016).	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016).	519	28
		Northern Migratory Coastal	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	Western North Atlantic Stock	-/-, N	172,974 (0.21, 145,216, 2016).	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic Stock	-/-, N	39,921 (0.27; 32,032; 2016).	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Stock	-/-, N	35,215 (0.19; 30,051; 2016).	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy Stock.	-/-, N	95,543 (0.31; 74,034; 2016).	851	164
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic Stock	-/-, N	61,336 (0.08; 57,637; 2018).	1,729	339
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic Stock	-/-, N	27,300 (0.22; 22,785; 2016).	1,389	4,453

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

A detailed description of the species likely to be affected by BPW's activities, including information regarding population trends, threats, and local occurrence, was provided in the **Federal Register** notice for the proposed IHA (88 FR 2325; January 13, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018)

described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA (88 FR 2325; January 13, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (88 FR 2325; January 13, 2023) for that information.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker or boomer. Based on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated nor authorized. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at

distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

BPW's activities include the use of impulsive (*i.e.,* boomer and sparker) sources, and therefore, the RMS SPL thresholds of 160 dB re 1 µPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

BPW's activity includes the use of impulsive (*i.e.,* boomer and sparker) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see BPW's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. BPW did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient. The sparker planned for use by BPW are omnidirectional and, therefore, beamwidth does not factor into those calculations.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 in the **Federal Register** notice for the proposed IHA (88 FR 2325; January 13, 2023), shows the HRG equipment type used during the planned surveys and the source levels associated with those HRG equipment types.

BPW plans to use the Dual Geo-Spark 2000X (400 tip/800J). For all source configurations, the maximum power expected to be discharged from the sparker source is 800 J. However, Crocker and Fratantonio (2016) did not measure the Dual Geo-Spark or a source with an energy of 800 J. A similar alternative system, the Applied Acoustics Dura-spark with a 400 tip, was measured by Crocker and Fratantonio (2016) with an input voltage of 500–2,000J, and these measurements were used as a proxy for the Dual Geo-Spark. Table 1 in the **Federal Register** notice for the proposed IHA (88 FR 2325; January 13, 2023), shows the source parameters associated with this proxy. Using the measured source level of 203 dB RMS of the proxy, results of modeling indicated that the sparker would produce a distance of 141 m to the Level B harassment isopleth. BPW additionally plans to use the Applied Acoustics S-Boom. Crocker and Fratantonio (2016) did measure the Applied Acoustics S-Boom and values were used for a dual plate 300 J source setting. Using the measured source level of 196 dB RMS of the proxy, results of modeling indicated that the boomer would produce a distance of 41 m to the Level B harassment isopleth.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by BPW that has the potential to result in Level B harassment of marine mammals, the Dual Geo-Spark 2000X would produce the largest distance to the Level B harassment isopleth (141 m).

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the survey area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa.

For the exposure analysis, density data from Roberts and Halpin (2022) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts and Halpin (2022) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the Lease Area and the ECR Area for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions noted later. Estimated greatest average seasonal densities (animals/km^2) of marine mammal species that may be

taken by the planned survey can be found in Tables 7 and 8 of BPW's IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts and Halpin (2022) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock (Coastal Stock) and the Western North Atlantic Offshore Stock (Offshore Stock)); however, Roberts and Halpin (2022) do not differentiate by stock. The Coastal Stock is assumed to generally occur in waters less than 20 m and the Offshore Stock in waters deeper than 20 m (65-ft) isobath. The lease area is in waters deeper than 20 m and only the Offshore Stock would occur and could be potentially taken by survey effort in that area. For the ECR survey area, both stocks could occur in the area, so BPW calculated separate mean seasonal densities for the portion that is less than 20 m in depth and for the portion that is greater than 20 m in depth to use in estimating take of the Coastal and Offshore Stocks of bottlenose dolphins, respectively. Additionally, different trackline totals were used to calculate take of either the Coastal or Offshore Stocks of bottlenose dolphins (6,945 km trackline of Offshore Stock and 6,323 km trackline of the Coastal Stock).

Furthermore, the Roberts and Halpin (2022) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates of Roberts and Halpin (2022) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* harbor, gray, hooded, and harp). For this IHA, only the harbor seals and gray seals are reasonably expected to occur in the survey area; so densities of seals were split evenly between these two species.

Lastly, the Roberts and Halpin (2022) density model does not differentiate between the pilot whale species. We assume that all pilot whales near the project area would be long-finned pilot whales due to their range overlapping with the survey area and short-finned pilot whales are not anticipated to occur as far north as the survey area. For this IHA, densities of pilot whales are assumed to be only long-finned pilot whale.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and is authorized.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Dual Geo-Spark 2000X and 41 distance associated with the Applied Acoustics S-Boom) to the Level B harassment criterion and the total length of the survey trackline are then used to calculate the total ensonified area, or zone of influence (ZOI) around the survey vessel.

As mentioned above, there are two possible options for BPW's surveys in the Lease area using the Dual Geo-Spark 2000X.

1. One Dual Geo-Spark 2000X would be used at a minimum of 30 m line spacing with tieline spacing of 500 m for a total survey distance of 9,923 km in the Lease Area.

2. Up to four Dual Geo-Spark 2000X would be towed to conduct an Ultra High Resolution 3-dimensional (UHR3D) survey. The sparkers would be fired sequentially such that only one is fired at a time with 0.33 seconds between shots. The sparkers would be physically spaced 25 m apart for a total spread of 75 m. The tracklines would be similar to those for the single sparker; however, they would be spaced a minimum of 43.75 m apart with tielines spaced at 500 m for a shorter total survey distance of 6,814 km.

Since either option may be used, BPW is requesting take based on the worst-case-scenario between the two options which is Option 1 the single Dual Geo-Spark 2000X—based on maximum total line-km.

In the ECR area, either the boomer or sparker will be used. Regardless of which system is used, BPW plans to conduct the survey with a minimum of 30 m line spacing and tielines spaced at 500 m intervals in Federal waters through potential cable corridors and at a minimum of 15 m line spacing and tielines spaced at 500 m in State waters (to meet State requirements) for a total of 13,268 km of combined tracklines and tielines. Because either method may be used, BPW is requesting take based on the worst-case-scenario between the two methods—the single Dual Geo-Spark 2000X—based on the largest estimated distance to the harassment criterion.

BPW estimates that the surveys will complete a total of 9,923 km survey trackline in the lease area and 13,268 km trackline in the ECR area. Based on the maximum estimated distance to the Level B harassment threshold of 141-m and the total survey length, the total ensonified area is therefore 2,799 km^2 for the lease area and 3,742 km^2 in the ECR area based on the following formula:

$$ZOI = (\text{Total survey length} \times 2r) + \pi r^2$$

Where: total survey length= the total distance of the survey track lines within the lease area and r = the maximum radial distance from a given sound source to the Level B harassment threshold.

This is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur and assumes the worst case scenario is the scenario chosen for the surveys.

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km^2), incorporating the greatest seasonal estimated marine mammal densities as described above. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting take of marine mammals shown below in Table 5:

$$\text{Estimated Take} = D \times ZOI$$

Where: *D* = greatest average seasonal species density (per km^2) and *ZOI* = maximum daily ensonified area to relevant thresholds.

TABLE 5—ESTIMATED TAKE NUMBERS AND TOTAL TAKE AUTHORIZED

Species	Estimated take—lease area	Estimated take—ECR area	Total take authorized	Percent of abundance
North Atlantic right whale	7	7	14	4.1

TABLE 5—ESTIMATED TAKE NUMBERS AND TOTAL TAKE AUTHORIZED—Continued

Species	Estimated take—lease area	Estimated take—ECR area	Total take authorized	Percent of abundance
Humpback whale	21	15	36	2.6
Fin whale	61	25	86	1.3
Sei whale	12	8	20	0.32
Minke whale	96	108	204	0.93
Sperm whale	4	2	6	0.14
Long-finned pilot whale	54	14	68	0.17
Bottlenose dolphin (W.N. Atlantic Offshore)	387	[1] 315	702	1.1
Bottlenose dolphin (Northern Migratory Coastal)	0	[2] 1659	1659	25
Common dolphin	3467	1267	4734	2.7
Atlantic white-sided dolphin	299	134	432	0.46
Atlantic spotted dolphin	167	54	221	0.55
Risso's dolphin	37	15	52	0.15
Harbor porpoise	657	655	1312	1.4
Harbor seal	194	985	1179	1.9
Gray seal [a]	194	985	1179	0.26

[a] This abundance estimate is the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for U.S. population is only 27,300.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The following mitigation measures must be implemented during BPW's planned marine site characterization surveys. Pursuant to section 7 of the ESA, BPW would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Visual Monitoring and Shutdown Zones

BPW must employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

During survey operations (*e.g.,* any day on which use of the sparker or boomer sources is planned to occur, and whenever the sparker or boomer source is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 minutes prior to ramp-up (described below) and must continue until one hour after use of the sparker or boomer source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker or boomer source (rather than being based around the vessel itself).

Three shutdown zones are defined, depending on the species and context. Here, an extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 meters from the sparker or boomer source (0–500 meters) is defined for North Atlantic right whales. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 meters (0–100 meters). If the boomer is used, the shutdown zone for all non-listed marine mammals is reduced to 50 meters. Any observations of marine mammals by crew members aboard any

vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker and boomer sources when technically feasible. Operators should ramp up sparker and boomer to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 minutes) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up (pre-start clearance). During this 30 minute pre-start clearance period the entire shutdown zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.
- The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the shutdown zone. If a marine mammal is observed within the shutdown zone during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species).
- PSOs must monitor the shutdown zones 30 minutes before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Sparker or boomer activation may only occur at night where operational planning cannot reasonably avoid such circumstances.
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker or boomer source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker or boomer source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is instructed by a PSO, the sparker or boomer source must be immediately deactivated and any dispute resolved only following deactivation.
- The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

Vessel Strike Avoidance

Crew and supply vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel

is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances are detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a North Atlantic right whales, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammals.
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- All vessels must reduce speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a North Atlantic right whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn (18.5 km/hour) or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whales, the vessel operator must assume that it is a North Atlantic right whales and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS North Atlantic right whales reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is BPW's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the survey area partially overlaps with a portion of a North Atlantic right whales SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required to adhere to vessel speed restrictions (<10 kn (18.5 km/hour)) when operating within the SMA during times when the SMA is active.

TABLE 6—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of BPW's vessel will abide by the described restrictions		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

More information on Ship Strike Reduction for the North Atlantic right whales can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral

context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Monitoring Measures

BPW must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than eighteen months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

BPW must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but BPW is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Shutdown Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Shutdown Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Shutdown Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with

thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances). Members of the PSO team shall consult the NMFS North Atlantic right whales reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations.

Reporting Measures

BPW shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc (ESRI) shapefile format and include the Coordinated Universal Time (UTC) date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov* and *ITP.Harlacher@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
15. Upon visual observation of any marine mammal, the following information must be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

c. PSO who sighted the animal;

d. Time of sighting;

e. Initial detection method;

f. Sightings cue;

g. Vessel location at time of sighting (decimal degrees);

h. Direction of vessel's travel (compass direction);

i. Speed of the vessel(s) from which the observation was made;

j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

k. Species reliability (an indicator of confidence in identification);

l. Estimated distance to the animal and method of estimating distance;

m. Estimated number of animals (high/low/best);

n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

o. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

p. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whales is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, BPW must report the sighting information to the NMFS North Atlantic right whales Sighting Advisory System (866–755–6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whales sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities, BPW must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 1, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate subsections below. Specifically, we provide additional discussion related to North Atlantic right whales and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007; Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141-m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whales mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. As noted previously, the survey area overlaps a migratory corridor BIA for North Atlantic right whales that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the planned survey activities are temporary (will occur for up to one year) and the spatial extent of sound produced by the survey would be small relative to the spatial extent of the available migratory habitat in the BIA, North Atlantic right whale migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km² in size (compared with the worst case scenario of approximately 6,541 km² of total estimated Level B harassment ensonified area associated with both the Lease Area and the ECR area surveys) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during BPW's planned activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested and is being authorized by NMFS as HRG survey operations are required to maintain and implement a 500 m shutdown zone. The 500-m shutdown zone for North Atlantic right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate North Atlantic right whales takes that would result from BPW's planned activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of BPW's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed between 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2021). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 1, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes would be in the form of short-term Level B harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the BIA for North Atlantic right whale migration that any avoidance of the area due to survey activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth of 141 m) to minimize the effects of any Level B harassment take of the species; and
- The mitigation measures, including visual monitoring and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures,

NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS authorizes incidental take by Level B harassment only of 15 marine mammal species with 16 managed stocks. The total amount of takes authorized relative to the best available population abundance is less than 5 percent for 15 stocks and 25 percent for the remaining stock (Western North Atlantic Migratory Coastal Stock of Bottlenose dolphins) (Table 5). The take numbers authorized are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources (OPR) has authorized take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to BPW for conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The IHA can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-bluepoint-wind-llc-marine-site-characterization-surveys-new.*

Dated: February 28, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–04445 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC812]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, March 23, 2023, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/5074155331765896027*.

ADDRESSES: This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will discuss and identify a preferred alternative for the Atlantic Salmon Aquaculture Framework. They will also review and recommend revisions, if necessary, to the draft goals and objectives for the Northern Edge Habitat/Scallop Management Framework. The Committee will discuss draft goals and objectives to be discussed by the Scallop Committee on March 29. They also plan to discuss an Exempted Fishing Permit request disapproved by NOAA Fisheries

within the Great South Channel Habitat Management Area, as a follow-up to prior Council review of the final report for an earlier phase of the work. The Committee will also receive updates from Council staff on recent coordination with BOEM and NOAA related to offshore wind leasing in the Gulf of Maine. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–04516 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC813]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Salmon Bycatch Committee will meet March 20, 2023 through March 21, 2023.

DATES: The meeting will be held on Monday, March 20, 2023 though Tuesday, March 21, 2023, from 9 a.m. to 5 p.m., Alaska Time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in-person at the UAA campus, Gorsuch Commons Room 107, 3700 Sharon Gagnon Lane, Anchorage, AK 99508 or join online through the link at *https://meetings.npfmc.org/Meeting/Details/2980.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council staff; phone: (907) 271–2809; email: *diana.stram@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, March 20, 2023, Through Tuesday, March 21, 2023

The agenda will include: (a) introductions; (b) information requested of staff; (c) review of purpose and need statements submitted; (d) review of conceptual alternatives submitted; (e) committee recommendations to the Council; and (f) and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2980* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2980.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2980.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–04517 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC795]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows in Ketchikan, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal IHA to the Alaska Department of Transportation and Public Facilities (ADOT) to incidentally harass marine mammals incidental to ferry berth improvements in Tongass Narrows in Ketchikan, Alaska.

DATES: This renewal IHA is valid from March 5, 2023 through March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On March 5, 2022, NMFS issued an IHA to ADOT to take marine mammals incidental to construction and/or improvements to four ferry berths in Tongass Narrows in Ketchikan, Alaska: Gravina Airport Ferry Layup Facility, the Gravina Freight Facility, the Revilla New Ferry Berth and Upland Improvements, and the New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements (87 FR 15387, March 18, 2022), effective from March 5, 2022 through March 4, 2023. NMFS previously issued two consecutive IHAs, one of which was renewed and the other reissued, prior to issuing the initial IHA (which includes some construction that was originally planned under the consecutive IHA's as well as some new/additional work) associated with this renewal.

Following the issuance of the initial IHA, ADOT reported the presence of northern elephant seals (*Mirounga angustirostris*) in the area, which had not been anticipated. In June 2022, NMFS modified the March 2022 initial IHA by adding authorized take by Level B harassment of this species at ADOT's request.

In July 2022 ADOT also requested to install a subset of temporary piles via down-the-hole (DTH) methods rather than the previously assumed vibratory pile driving, in case the overburden onsite was not deep enough. In September 2022 NMFS determined that ADOT's requested modification did not alter the original scope of activity analyzed or the impact analysis in a manner that materially affected the basis for the original findings. NMFS additionally modified the IHA to require additional shutdown zones but determined that authorization of additional take was not required.

On January 5, 2023, NMFS received an application for the renewal of that initial IHA. Following NMFS' review of the application, the ACOE submitted a revised version on January 19, 2023 and again on January 25, 2023. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization (and subsequent modifications) discussed above but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements-0*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published on February 10, 2023 (88 FR 8814).

Description of the Specified Activities and Anticipated Impacts

ADOT is making improvements to existing ferry berths and constructing new ferry berths on Gravina Island and Revillagigedo (Revilla) Island in Tongass Narrows, near Ketchikan in southeast Alaska. These ferry facilities provide the only public access between the city of Ketchikan, AK on Revilla Island, and the Ketchikan International Airport on Gravina Island. In-water work associated with the Revilla New Ferry Berth and Upland Improvements, and Gravina Airport Ferry Layup Facility have been completed. Only partial in-water work has been completed at the Gravina Island Shuttle Ferry Berth/Related Terminal Improvements, and no in-water work has been completed towards the Freight Facility. The remaining marine construction associated with the activities is planned to occur over 30 non-consecutive days over 1 year beginning March 5, 2023. The project's

planned activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include vibratory and impact pile driving, DTH operations for pile installation (rock socketing of piles and tension anchors to secure piles), and vibratory pile removal.

Under the initial IHA, Level B harassment is authorized for a small number of nine species of marine mammals (including northern elephant seal). Of those nine species, Level A harassment was authorized for five species Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*) and minke whale (*Balaenoptera acutorostrata*). Neither ADOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, a renewal IHA is appropriate.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of initial 2022 final IHA (87 FR 15387, March 18, 2022);
- **Federal Register** notice of initial 2022 proposed IHA (87 FR 5980, February 2, 2022); and
- Initial IHA application, Biological Opinion, References (available at *www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements-0*).

Detailed Description of the Activity

A detailed description of the ferry berth construction and improvements for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS also incorporates the installation of 20 24-inch temporary piles via DTH methods (rather than vibratory pile driving) at the Freight and Layup Facility (via the September 2022 modification of the initial IHA) to that detailed description, increasing the overall DTH drilling duration by approximately 6 percent over the duration of the project, as compared with the analysis in the **Federal Register** notices for the initial IHA. The 20 temporary piles require relatively short durations of DTH drilling in comparison to the production piles included in the initial analysis, which are drilled much further into the bedrock.

While the in-water work associated with the Revilla New Ferry Berth and Gravina Airport Ferry Layup Facility have been completed, the Gravina Shuttle Island Ferry Berth and the Freight Facility have not. At the time of the renewal request no in-water work had been completed at the Freight Facility and a subset of in-water work had been completed at the Gravina Island Shuttle Ferry Berth:

- Installation and removal of twelve 20-inch temporary piles;
- Installation of 10 rock sockets;
- Installation of 12 24-inch permanent piles.

In-water work that is planned for completion under this renewal IHA include remaining work at the Gravina Island Shuttle Ferry Berth:

- Installation of twenty-three 24-inch piles;
- Installation of twenty-eight tension anchors;
- Installation of 11 rock sockets.

and all pile driving activities for the Freight Facility:

- Installation of six 20-inch steel piles;
- Installation of three 24-inch piles;
- Installation of four 30-inch steel piles;
- Installation and removal of twelve 24-inch temporary piles;
- Installation of 13 tension anchors;
- Installation of 5 rock sockets.

The location, timing (*e.g.* seasonality), and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices (as updated through incorporation of the request to install temporary piles via DTH, rather than vibratory driver).

The remaining marine construction associated with the activities is planned to occur over 30 non-consecutive days over 1 year beginning March 5, 2023. Though concurrent use of two hammers is unlikely/expected to rarely occur during the remaining work under the renewal, the possibility remains. The initial IHA accounted for concurrent use of any combination of hammers for half the anticipated number of days of construction. That assumption is carried over into this renewal IHA. This renewal is effective for a period not exceeding 1 year from the date of expiration of the initial IHA (March 4, 2023).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA (87 FR 5980, February 2, 2022), and the Final IHA (87FR15387, March 18, 2023) for the initial authorization.

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. This includes consideration of changes proposed in the Draft 2022 Marine Mammal Stock Assessment Report (SARs) (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*) published on January 24, 2023, which include a slightly reduced Alaska Resident killer whale population abundance estimate.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notices of the Proposed IHA (87 FR 5980, February 2, 2022) and Final IHA (87FR15387, March 18, 2023) for the initial authorization.

In the case of installing temporary piles via DTH drilling rather than vibratory drilling, the nature of the impacts are the same, but they required identification of larger Level A harassment zones and a larger Level B harassment zone than originally anticipated. For installation of these temporary piles using DTH drilling, given the estimated source level of 167 dB RMS, the Level B harassment zone would be 13,594 m for all hearing groups. Regarding Level A harassment, using an estimated source level of 159 dB SEL at 10m, a strike rate of 15 strikes per second, an estimated DTH drilling duration of 180 minutes per pile (maximum duration estimated by ADOT), two piles per day (maximum daily pile number estimated by ADOT), and a transmission loss coefficient of 15 m, the use of DTH drilling for these temporary piles is estimated to produce the following hearing group-specific Level A harassment zones:

- Low-frequency cetaceans: 1,183 m
- Mid-frequency cetaceans: 42 m
- High-frequency cetaceans: 1,410 m
- Phocid pinnipeds: 633 m
- Otariid pinnipeds: 46 m

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and determined that neither this nor any other new information affects our initial

analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs (87 FR 5980, February 2, 2022; 87 FR 15387, March 18, 2022) for the initial authorization. The source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Here, we provide additional discussion for northern elephant seal.

In consideration of the information provided by ADOT, described above in this section, NMFS expected that one elephant seal may have been taken by Level B harassment per week over the remainder of the effective period of the IHA (through March 4, 2023). At the time of analysis, 37 weeks remained in the effective period of the IHA, and NMFS authorized 37 takes of the California breeding stock of elephant seals. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA and subsequent authorization of take by Level B harassment of elephant seal. The take calculation method also remains the same, with the exception of fewer days of activity than what was described in the initial IHA. The approximate total number of operational days for this Renewal IHA is 33 percent of what was analyzed in support of the initial IHA. As such, take for most stocks have been reduced to 33 percent of the take authorized through the initial IHA (including for elephant seal). In cases when such a change would bring authorized take levels below the estimated group size for a given species [described in Initial 2021 proposed IHA (87 FR 5980, February 2, 2022; the Initial 2022 final IHA (87 FR 15387, March 18, 2022); take has been increased to the estimated group size to retain some allowance in the event that this species should occur in the project area.

TABLE 1—ESTIMATED TAKE AUTHORIZED AND PROPORTION OF POPULATION POTENTIALLY AFFECTED

		Authorized take			
Species	DPS/stock	Level A harassment	Level B harassment	Total	Percent of stock
Steller sea lion	Eastern U.S.	30	716	746	1.7
Harbor seal	Clarence Strait	38	335	373	1.3
Harbor porpoise	Southeast Alaska	*5	9	14	1.1
Dall's porpoise	Alaska	*12	68	80	0.6
Pacific white-sided dolphin	North Pacific	0	*92	92	3.4
Killer whale	Alaska Resident	0	24	24	1.0
	West Coast Transient				6.9
	Northern Resident				7.9
Humpback whale	Central North Pacific	0	75	75	0.7
Minke whale	Alaska	*1	*2	3	N/A
Northern Elephant Seal	California Breeding Stock	0	12	12	0.01

*Take for most stocks have been reduced to 33% of the take authorized through the initial IHA. In cases when such a change would bring authorized take levels below the estimated group size for a given species [described in Initial 2021 proposed IHA (87 FR 5980, February 2, 2022; the Initial 2022 final IHA (87 FR 15387, March 18, 2022)], take has been increased to the estimated group size group size to retain some allowance in the event that this species should occur in the project area.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (87 FR 15387, March 18, 2022), and subsequent updates to shutdown zones for DTH installation of temporary piles, are included in Table 2 and Table 3.

The same measures are included for this renewal and are summarized here:

- ADOT must implement a minimum shutdown zone of 10 m radius around the pile/hole/vessel for use of in-water heavy machinery/vessel (*e.g.,* barge, dredge);
- ADOT must shut down if any marine mammals come within hearing group-specific shutdown zones (Table 2 and Table 3);
- ADOT must implement pile driving soft-starts whereby hammer energy is gradually ramped-up
- ADOT must employ at least three PSOs to monitor the harassment zones;
- ADOT must submit a draft report detailing all monitoring within ninety calendar days of the completion of marine mammal monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first;
- ADOT must prepare and submit final report within thirty days following resolution of comments on the draft report from NMFS;
- ADOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- ADOT must report injured or dead marine mammals.

The discussion of the least practicable adverse impact included in those documents and the Notice of the proposed IHA (87 FR 5980, February 2, 2022) remains accurate.

TABLE 2—TIERED SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES, BASED ON ACTIVITY AND DURATION FOR VIBRATORY PILE DRIVING AND REMOVAL, IMPACT PILE DRIVING, AND SINGLE-SOURCE DTH

Activity	Pile size (m)	Minutes per pile or strikes per pile	Minimum shutdown zone (m)							Level B harassment isopleth
			LF (humpback whales)	LF (minke whales)	MF	HF	PW	OW	Elephant seal (Dashes indicate that shutdown zones have not been explicitly calculated. ADOT may implement a tiered approach to shutdown zones, depending on the daily duration of activities, following the method described in the Mitigation Measures section of the initial Final IHA Notice.)	
Vibratory Installation.	30	60 min	50	20						6,310
	24	60 min								5,412
	20	60 min								
Vibratory Removal.	24	60 min								
DTH of Temporary Piles.	24	180 min	1,200	1,200	50	1,450	650	50	650	13,594
DTH of Rock Sockets.	30	60 min	780	1,500	30	500	200	40	450	13,594
		120 min	1,300		50			50		
		180 min	1,700		60			70		
		240 min	2,000		70			80		
		300 min	2,300		90			900	1,250	
		360 min	2,600							
		420 min	2,900							
		480 min	3,100		100			100		
		540 min	3,400							
		600 min	3,600		130			100	1,950	
		60 min	360		20			20	200	
		120 min	570		30			30		
		180 min	750		30			30		
		240 min	910		40			40		
		300 min	1,100		40			50	600	
		360 min	1,200		50			50		
		420 min	1,400		50			60		
		480 min	1,500		60			60		
		540 min	1,600		60			70		
		600 min	1,700		60			70	900	
DTH of Tension Anchor.	8	120 min	90	90	20	100	50	20	600	
		240 min	130	130		160	70		900	
Impact Installation.	30	50 strikes	100	100	20	120	60	20	60	2,154
	24	50 strikes	60	60	20	70	30	20	30	1,000
	20	50 strikes	60	60	20	70	30	20	30	

TABLE 3—SHUTDOWN ZONES, BY HEARING GROUP FOR SIMULTANEOUS USE OF TWO DTH HAMMERS

Activity combination	Duration (minutes)	Level A harassment isopleth (m)					
		LF	MF	HF	PW	OW	Elephant seal
8-in pile, 8-in pile	60	90	20	100	50	20	50
	120	130		160	70		70
	180	170		200	100		100
	240	210		250	110		150
8-in pile, 24-in pile	60	520	20	500	200	20	300
	120	820	30			40	450
	180	1,080	40			50	600
	240	1,300	50			60	700
8-in pile, 30-in pile	60	1,110	40			50	600
	120	1,770	70			70	950
	180	2,310	90			90	1,250
	240	2,800	100			110	1,500
24-in pile, 24-in pile	60	570	20			30	350
	120	910	32			40	500

TABLE 3—SHUTDOWN ZONES, BY HEARING GROUP FOR SIMULTANEOUS USE OF TWO DTH HAMMERS—Continued

Activity combination	Duration (minutes)	Level A harassment isopleth (m)					
		LF	MF	HF	PW	OW	Elephant seal
	180	1,190	42	.....	.....	50	650
	240	1,440	60	.....	.....	60	800
24-in pile, 30-in	60	900	40	.....	.....	40	500
	120	1,430	60	.....	.....	60	800
	180	1,880	70	.....	.....	80	1,050
	240	2,270	90	.....	.....	90	1,250
30-in pile, 30-in pile	60	1,230	50	.....	.....	50	700
	120	1,950	70	.....	.....	80	1,050
	180	2,550	100	.....	.....	100	1,400
	240	3,090	110	.....	.....	120	1,650

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to ADOT was published in the **Federal Register** on February 10, 2023 (88 FR 8814). That notice either described, or referenced descriptions of, ADOT's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. No public comments were received.

Determinations

The renewal request consists of a subset of activities analyzed through the initial authorization and subsequent authorizations described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that ADOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). Although new abundance information became available for Alaska Resident killer whale, none of this new information affects NMFS' determinations supporting issuance of the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA (as modified).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ADOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS' Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS' Alaska Regional Office (AKRO).

The effects of the Federal action authorized through the initial IHA were adequately analyzed in NMFS' Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion for Construction of the Tongass Narrows Project (Gravina Access), revised December 19, 2019. It concluded that the take NMFS proposed to authorize through the initial IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. Because this renewal IHA authorizes a subset of activities already analyzed through the existing Biological Opinion, reinitiating consultation is not necessary.

Renewal

NMFS has issued a renewal IHA to ADOT for the take of marine mammals incidental to conducting ferry berth improvements in Tongass Narrows in Ketchikan, Alaska between March 5, 2023 and March 4, 2024.

Dated: March 1, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–04533 Filed 3–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research (BCER). This meeting is open to the public.

DATES: The BCER will meet from 8:00 a.m. to 12:00 p.m. on March 28, 2023, Central Standard Time Zone (CST). The Executive Session of the Board will convene from 8:00 a.m. to 4:15 p.m. on March 29, 2023. All sessions are open to the public and are held in CST.

ADDRESSES: The address of all sessions is Hilton Garden Inn McCormick Place 123 E Cermak Rd., Suite 300, Chicago, Il 60616.

FOR FURTHER INFORMATION CONTACT: Dr. Julie Dean Rosati, the Board's Designated Federal Officer (DFO), (202) 761–1850 (Voice), *Julie.D.Rosati@usace.army.mil* (email). Mailing address is Board on Coastal Engineering Research, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, Coastal and Hydraulics Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Website: *https://www.erdc.usace.army.mil/Locations/CHL/CERB/* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C.), Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The Board's mission is to provide broad policy guidance and review and develop research plans and projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers. The objective of this meeting is to identify coastal research needs and address Environmental Justice and Non-Structural Solutions.

Agenda: Starting Tuesday morning March 28, 2023, at 8:00 a.m. the Board will be called to order with an opening presentation on the USACE Planning Process and USACE Strategic Focus Areas. Following this, the Coastal Working Group (CWG) will provide an update ongoing initiatives and R&D needs related to the meeting objective.

Afterwards, a panel presentation entitled ''Great Lakes Coastal Processes and Projects'' will begin. Presentations include Overview of Great Lakes Regional Coastal Setting and Coastal Resiliency Mega-Study and; Great Lakes Project Needs. The meeting will then adjourn for the day.

The Board will meet in Executive Session to discuss ongoing initiatives, future actions, and hear more panel presentations on Wednesday, March 29, 2023, from 8:30 a.m. to 4:15 p.m. After an overview of previous day topics, a panel session entitled ''Ongoing Research, Needs and Gaps'' will begin. Presentations include: National Coastal Environmental Justice/Non-Structural Successes and Gaps; International Approaches to Equitable Watershed Planning Solutions; and USACE Environmental Justice Successes, Ongoing Work, and Gaps. Updates on BCER initiatives will be given followed by on update on current board action items. Afterwards, the board will discuss meeting logistics for the next annual session and give final comments.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to space availability, the meeting is open to the public both in-person and virtually. Because seating capacity is limited, advance registration is required. For registration requirements please see below. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email, and telephone contact information to Ms. Tanita Warren at *Tanita.S.Warren@usace.army.mil* no later than Friday, March 24, 2023. Specific instructions for virtual meeting participation, will be provided by reply email.

Oral participation by the public is scheduled for 2:45 p.m. on Wednesday, March 29, 2023. For additional information about public access procedures, please contact Dr. Julie Dean Rosati, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than March 24, 2023, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: In accordance with section 10(a)(3) of the FACA and Title 41 CFR 102–3.015(j) and 102–3.140, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Dr. Julie Dean Rosati, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a

verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

David B. Olson,

Federal Register Liaison Officer, Corps of Engineers.

[FR Doc. 2023–04524 Filed 3–3–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0158]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Subpart J—Approval of Independently Administered Tests

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 5, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart J—Approval of Independently Administered Tests.

OMB Control Number: 1845–0049.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 67,989.

Total Estimated Number of Annual Burden Hours: 10,392.

Abstract: This request is for a revision of the approval for the reporting and recordkeeping requirements that are contained in the information collection 1845–0049 for Student Assistance General Provision in the regulations in Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process.

There are no forms or formats established by the Department for the reporting or recordkeeping requirements. These regulations govern the application for and approval of assessments by the Secretary by a private test publisher or State that are used to measure a student's skills and abilities. The administration of approved ATB tests may be used to determine a student's eligibility for assistance for the Title IV student financial assistance programs authorized under the Higher Education Act of 1965, as amended (HEA) when, among other conditions, the student does not have a high school diploma or its recognized equivalent.

Dated: February 28, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–04458 Filed 3–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0134]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Evaluation of Title III Implementation

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 5, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202–245–7283.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Evaluation of Title III Implementation.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 422.

Total Estimated Number of Annual Burden Hours: 317.

Abstract: The data collection described in this submission includes state- and district-level surveys for the National Evaluation of Title III Implementation. This study is designed to provide information to policymakers, administrators, and educators about state and local practices for serving English learners (ELs), both through implementation of Title III, Part A of the Elementary and Secondary Education Act (ESEA) and more generally. The surveys will collect information on criteria for identifying and reclassifying ELs, instructional models and strategies for ELs, strategies for promoting EL teacher quality, and supports for EL parents and families.

Dated: March 1, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–04529 Filed 3–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0042]

Agency Information Collection Activities; Comment Request; Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 5, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0042. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, (202) 205–1645.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

OMB Control Number: 1810–0060.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,812.

Total Estimated Number of Annual Burden Hours: 4,061.

Abstract: The U.S. Department of Education (ED) is requesting a three-year extension of the Annual Report of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected and Delinquent Children. Approval of this form is needed in order to continue the on-going collection of data used to allocate funds authorized under Title I, Part A and Title I, Part D, Subparts 1 and 2 of the Elementary and Secondary Education Act of 1965 (ESEA). Title I, Part A provides formula grants to local educational agencies (LEAs), through State educational agencies (SEAs), to improve the teaching and learning of at-risk students in high-poverty schools. In order to calculate Title I, Part A allocations, ED must annually collect data on the number of children living in locally operated institutions for neglected or delinquent (N or D) children.

Dated: March 1, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–04556 Filed 3–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the Weatherization Assistance Program; Correction

AGENCY: Office of State and Community Energy Programs, Department of Energy.

ACTION: Notice and request for comments; correction.

SUMMARY: On October 26, 2022, the Department of Energy (DOE), published a 30-day notice in the **Federal Register** that announced intent to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument and instructions should be directed to Brittany Price, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or phone at *brittany.price@hq.doe.gov,* (240) 306–7252.

Corrections

In the **Federal Register** of October 26, 2022, in FR Doc. 2022–23240, on page 64783, please make the following correction:

In that notice under **SUPPLEMENTARY INFORMATION**, first column, first paragraph, (8) *Annual Estimated Reporting and Recordkeeping Cost Burden* has changed. The original (8) *Annual Estimated Reporting and Recordkeeping Cost Burden* was ''$366,824.64''. The new (8) *Annual Estimated Reporting and Recordkeeping Cost Burden* is ''$430,003.44''.

Reason for Correction: The previous hourly wage rate for state government financial personnel that was used to calculate the estimated cost burden for recipients was adjusted to the fully burdened rate, which led to the change in total cost that is reflected by this correction.

Signing Authority

This document of the Department of Energy was signed on February 28, 2023, by Kathleen Hogan, Principal Deputy Under Secretary for Infrastructure, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–04530 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Quantum Initiative Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the National Quantum Initiative Advisory Committee (NQIAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, March 24, 2023; 9:00 a.m. to 1:00 p.m. EST.

ADDRESSES: *Virtual Meeting:* Instructions to participate remotely will be posted on the National Quantum Initiative Advisory Committee website at: *https://www.quantum.gov/about/nqiac/* prior to the meeting and can also be obtained by contacting Thomas Wong, (240) 220–4668 or *NQIAC@quantum.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Wong, Designated Federal Officer, NQIAC, (240) 220–4668 or *NQIAC@quantum.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The NQIAC has been established to advise the President, the National Science and Technology Council (NSTC) Subcommittee on Quantum Information Science (SCQIS), and the NSTC Subcommittee on Economic and Security Implications of Quantum Science (ESIX) on the National Initiative Act (NQI) Program, and on trends and developments in quantum information science and technology, in accordance with the National Quantum Initiative Act (Pub. L. 115–368) and Executive Order 14073.

Tentative Agenda:

- Science and Infrastructure Subcommittee Recommendations
- Workforce and Industry Subcommittee Recommendations
- Security and International Subcommittee Recommendations

Public Participation: The meeting is open to the public. It is the policy of the NQIAC to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The NQIAC expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on March 24, 2023, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on NQIAC's work, not for business marketing purposes. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *NQIAC@quantum.gov,* no later than 12:00 p.m. Eastern Time on March 17, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, NQIAC will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the committee.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *NQIAC@quantum.gov* no later than 12:00 p.m. eastern time on March 17, 2023, so that the comments may be made available to the NQIAC members prior to this meeting for their consideration. Please note that because NQIAC operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the NQIAC website.

Minutes: The minutes of this meeting will be available on the National Quantum Initiative Advisory Committee website at: *https://www.quantum.gov/about/nqiac/.*

Signed in Washington, DC, on February 27, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–04518 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of National Transmission Needs Study and Request for Comment

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of availability of the draft *National Transmission Needs Study* for public review and comment.

DATES: DOE is currently accepting public comment from March 6, 2023 through April 20, 2023. Comments must be sent to *NeedsStudy.Comments@hq.doe.gov* by midnight EST, April 20, 2023.

ADDRESSES: Interested parties are to submit comments electronically to

NeedsStudy.Comments@hq.doe.gov. DOE's guidance is available at: *www.energy.gov/gdo/national-transmission-needs-study.*

FOR FURTHER INFORMATION CONTACT: Adria Brooks, U.S. Department of Energy, Grid Deployment Office, via (202) 586–2006; or *NeedsStudy.Comments@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE's Grid Deployment Office (GDO) is announcing the availability of the draft *National Transmission Needs Study* (Needs Study) and requests public comment on the draft.

Section 216(a) of the Federal Power Act (FPA), as recently amended by section 40105 of the Infrastructure Investment and Jobs Act (IIJA), requires DOE to conduct a study of electric transmission capacity constraints and congestion every three years. The Needs Study implements that statutory provision and replaces what was formerly known as the National Electric Transmission Congestion Study.

Pursuant to section 216(a)(1), DOE has consulted with states, Tribes, and appropriate regional reliability entities regarding the Needs Study, including by providing a consultation draft for review and comment by these entities, as well as through a series of six audience-specific webinars following release of the consultation draft, and availability of DOE staff for phone calls and meetings. The draft Needs Study made available for public comment by this Notice reflects revisions made in light of the comments and input that DOE received from states, Tribes, and regional reliability entities.

Pursuant to section 216(a)(2) of the FPA, the study would inform any decision to exercise DOE's National Interest Electric Transmission Corridor designation authority. The Needs Study will also inform DOE as it coordinates the use of other authorities and funding related to electric transmission. These include new authorities under the IIJA and existing DOE programs, such as grid-related research and development and financing authorities that support grid infrastructure development.

Members of the public can visit GDO's website to access the public draft of the study as well as guidance for how to send comments or request further information at: *https://www.energy.gov/gdo/national-transmission-needs-study.* Comments will be made available publicly at the same website.

Signing Authority

This document of the Department of Energy was signed on February 23, 2023, by Maria D. Robinson, Director of the Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. The administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–04521 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Renewal

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to renew, for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before May 5, 2023. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management, 1000 Independence Avenue SW, Washington, DC 20585–0121 or by email at *richard.bonnell@hq.doe.gov.* Please put ''2023 DOE Agency Information Collection Renewal-Financial Assistance'' in the subject line when sending an email.

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by phone at (202) 287–1741 or by email at *richard.bonnell@hq.doe.gov.* Please put ''2023 DOE Agency Information Collection Renewal-Financial Assistance'' in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the renewed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.:* 1910–0400 (Renewal); (2) *Information Collection Request Title:* DOE Financial Assistance Information Clearance; (3) *Type of Review:* Renewal; (4) *Purpose:* This information collection package covers mandatory collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) *Annual Estimated Number of Respondents:* 22,900; (6) *Annual Estimated Number of Total Responses:* 265,550; (7) *Estimated Number of Burden Hours:* 1,464,800; and (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authorities: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308.

Signing Authority

This document of the Department of Energy was signed on February 24, 2023, by John R. Bashista, Director, Office of Acquisition Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of

the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–04519 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before April 5, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ping Ge, Office of Workforce Development for Teachers and Scientists—SC 3.3, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; (202) 287–6490; *sc.wdts@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–NEW.

(2) *Information Collection Request Titled:* Office of Workforce Development for Teachers and Scientists (WDTS) Workforce Development Highlights.

(3) *Type of Review:* New.

(4) *Purpose:* The WDTS Workforce Development Highlights will provide insight to the experience of participants in WDTS lab-based programs. Edited versions of the information submitted by respondents will be published to the WDTS website for prospective applicants to read and learn what it would be like to participate in WDTS lab-based programs.

(5) *Annual Estimated Number of Respondents:* 100.

(6) *Annual Estimated Number of Total Responses:* 100.

(7) *Annual Estimated Number of Burden Hours:* 100.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $6,122.

Statutory Authority: Energy and Water Development Appropriations Bill, 2022.

Signing Authority

This document of the Department of Energy was signed on February 23, 2023, by Asmeret Asefaw Berhe, Director, Office of Science, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–04513 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Preparing a Future Workforce in Quantum Information Science

AGENCY: Office of Science, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The rapidly emerging field of Quantum Information Science (QIS) has the potential to produce innovations in quantum computing, simulation, communication, sensing and other technologies which are critical to our nation's future economic and national security. As a new and strongly technology-oriented field, QIS requires a well-trained workforce to fill positions ranging from research and development to design and manufacturing. The Office of Science in the U.S. Department of Energy (DOE) invites input from higher education institutions on approaches needed to prepare students for careers related to QIS, including identification of opportunities where DOE's network of national laboratories could assist in training the future scientific and technological QIS workforce. Higher education institutions, including public and private universities, Historically Black Colleges and Universities (HBCUs), Minority Serving Institutions, community colleges, and emerging research institutions (defined as ''an institution of higher education with an established undergraduate or graduate program that has less than $50,000,000 in Federal research expenditures'' [CHIPS and Science Act]), are especially encouraged to provide input.

DATES: Responses to the RFI must be received by April 20, 2023.

ADDRESSES: DOE is using the *www.regulations.gov* system for the submission and posting of public comments in this proceeding. All comments in response to this RFI are, therefore, to be submitted electronically through *www.regulations.gov* via the web form accessed by following the ''Submit a Formal Comment'' link.

FOR FURTHER INFORMATION CONTACT: Questions may be submitted to *sc.wdts@science.doe.gov* or Ping Ge at (202) 287–6490.

SUPPLEMENTARY INFORMATION:

Background

QIS is a rapidly developing area of science and technology (S&T) and advances in this area have the potential of profoundly impacting the U.S. economy and national security, through innovations in quantum computing, simulation, communication, and sensing. Recognizing the great potential of QIS, and aware of the growing

international competition in this promising new area of S&T, Congress passed the National Quantum Initiative Act in 2018. DOE's Office of Science (SC) is an integral partner in the National Quantum Initiative (NQI) and has supported a range of research programs in QIS since 2016 (*https://science.osti.gov/Initiatives/QIS*), including establishing 5 National QIS Research Centers (NQISRC) (*https://science.osti.gov/Initiatives/QIS/QIS-Centers/*), as well as single- and multi-investigator research projects.

As part of the 2021 Consolidated Appropriations Act, Congress directed DOE to establish a working group comprised of representatives from SC, DOE national laboratories, and universities to assess how to assist institutions of higher education in developing curricula to promote the next generation of scientists working in QIS at all levels, ranging from the manufacture and troubleshooting of quantum information devices, to the design, research and development of novel QIS technologies and fundamental science. A workshop (*https://science.osti.gov/wdts/STEM-Resources/Quantum-Workforce-Development-in-DOE*) was held in early 2021 which recognized that two communities should contribute to curriculum development for QIS, the ''demand side'' and the ''supply side.'' The demand side is composed of industries supporting development and manufacturing of technologies based on QIS, as well as government laboratories and universities conducting research and development in QIS. It is in this demand side that DOE has its most important role. The 17 DOE national laboratories are a large and growing employer of QIS scientists, engineers, and technical professionals. The supply side is primarily composed of degree-granting institutions and the National Science Foundation (NSF), which directly supports educational research. In addition to DOE's role in defining the knowledge base, skills, and experience needed to participate in DOE-funded QIS activities, DOE contributes to the supply side via the training of QIS scientists, engineers, and technical professionals through DOE's portfolio of research internships, summer schools, and fellowships for all educational levels, ranging from high school to established faculty (*see* for example: *https://science.osti.gov/wdts*). In addition, students receive training as part of QIS research supported by DOE, including the NQISRCs and single- and multi-investigator research projects. Guided by the understanding of DOE's dual role in both the demand side and supply side, SC surveyed QIS experts from across the DOE national laboratories to identify: (1) the essential skills needed for preparing students for future QIS careers and (2) potential approaches in which the national laboratories could assist educational institutions with developing those skills. Their responses form the basis of the input requested in questions 3 and 4 below and are summarized in the document at *https://science.osti.gov/-/media/wdts/excel/Appendix---Undergraduate-and-Graduate-Essential-QIS-Skills.xlsx.* Based on these findings, SC now seeks input from higher education institutions to gain further understanding of how SC resources, especially at the DOE national laboratories, can uniquely contribute to preparing a future QIS workforce in partnership with educational institutions.

This RFI seeks input from higher education institutions on the state and needs of current educational and training programs for supporting the preparation of scientists, engineers, and technical professionals in QIS. Specifically, the DOE Office of Science seeks feedback on which essential skills required for training a new QIS workforce are likely to be provided by higher education institutions, and which could be provided or enriched by training opportunities and resources at DOE national laboratories. Higher education institutions include public and private universities, Historically Black Colleges and Universities (HBCUs), Minority Serving Institutions (MSIs), community colleges, and emerging research institutions.

Informed by the feedback collected from this RFI, the DOE Office of Science will develop a plan to complement workforce development training provided by higher education institutions in preparing their students for a future workforce in QIS. This plan will augment DOE's existing portfolio of research internships, summer schools, and fellowships for all educational levels, ranging from high school to established faculty.

Questions for Input

This RFI will provide a foundation for DOE to develop a plan to complement training provided by higher education institutions to prepare students for a future scientific and technological workforce in QIS. The RFI is a solicitation for public input to help identify approaches through which DOE can contribute to the training of students for future careers in QIS. Higher education institutions, including public and private universities, HBCUs, MSIs, community colleges, and emerging research institutions, are especially encouraged to provide input.

Responses are requested for the 8 questions listed below. Respondents may provide input regarding any or all of these questions. Each response should be numbered to match the specific question listed.

(1) Briefly describe the types of training related to QIS offered at your institution at the undergraduate and/or and graduate levels, including coursework and research experiences.

(2) Does your institution offer degrees specific to QIS or QIS-related fields? Consider each of the following degree types in your response, and specify for which QIS or QIS-related field(s) the degree type is offered:

- Certificate
- Associate Degree
- Bachelor's Degree
- Master's Degree
- Doctoral Degree
- Other Degree (please specify)

(3) The lists below describe the top ten skills needed for (3a) undergraduate students and (3b) graduate students who are preparing for careers in QIS, as identified in a survey of QIS experts at DOE national laboratories. The detailed description for each skill at a specific academic level can be found at *https://science.osti.gov/-/media/wdts/excel/Appendix---Undergraduate-and-Graduate-Essential-QIS-Skills.xlsx.*

For each skill and academic level, please identify those that are offered by your institution (O), not offered by your institution with no interest to offer in the future (N), not currently offered by your institution but planned to be offered in the future (F), or not offered by your institution due to resource constraints (RC) such as lack of people (time/expertise) or equipment.

(3a) Top ten skills essential for an undergraduate student to obtain a position in QIS.

- Apply existing algorithms to specific problems
- Apply statistical methods for data analysis
- Code
- Debug code
- Implement existing algorithms on hardware
- Troubleshoot experiments in the laboratory
- Understand cryogenic systems
- Understand the Hamiltonian description of a system
- Use electronics to control and power hardware
- Use qubit hardware

(3b) Top ten skills essential for a graduate student to obtain a position in QIS.

- Apply statistical methods for data analysis
- Code
- Debug code
- Develop new algorithms
- Troubleshoot experiments in the laboratory
- Understand cryogenic systems
- Understand material properties relevant to specific hardware
- Understand the Hamiltonian description of a system
- Use electronics to control and power hardware
- Use laser systems

(4) The below list summarizes the responses to the survey by QIS experts across the DOE national laboratories about potential training opportunities that could be provided at national laboratories. As DOE begins to develop internships and other training programs specifically designed for QIS, input is needed on activities that would be most valuable to the students and complement training offered at your institutions. For (4a) undergraduate and (4b) graduate students, please identify: (1) how useful the proposed training opportunities at the DOE national laboratories would be in assisting your institution in equipping students with essential skills for the future QIS workforce (High, Medium, or Low) and (2) the likelihood of your institution encouraging student participation in the proposed opportunities, if they were offered by the DOE national labs (Likely, or Unlikely).

(4a) Possible training opportunities at national laboratories for undergraduate students.

Short Courses/Summer Schools

- Apply statistical methods for data analysis
- Apply existing algorithms to specific problems
- Code
- Implement existing algorithms on hardware
- Understand the Hamiltonian description of a system
- Use qubit hardware

Lab-Based Experiences, e.g., Internships

- Debug code
- Troubleshoot experiments in the lab
- Understand cryogenic systems
- Use electronics to control and power hardware

(4b) Possible training opportunities at national laboratories for graduate students.

Short Courses/Summer Schools

- Apply statistical methods for data analysis
- Code
- Debug code
- Understand the Hamiltonian description of a system

Lab-Based Experiences, e.g., Internships

- Develop new algorithms
- Troubleshoot experiments in the lab
- Understand cryogenic systems
- Understand material properties relevant to specific hardware
- Use electronics to control and power hardware
- Use laser systems

(5) Are there mechanisms (either formal or informal) by which your institutions could acknowledge the participation in a training activity at DOE national laboratories? Please select all mechanisms that apply to your institution(s):

- Recognizing completion for a short course/summer school offered by DOE national laboratories as a proof of knowledge and skill acquisition.
- Giving credits for a short course/summer school offered by DOE national laboratories.
- Accepting laboratory-based research internships as an alternative Capstone project for a course at home institution.
- Other (please explain).

(6) Through what approaches can DOE best support institutions in adding QIS content to existing curriculum or offering new courses in Quantum areas? Please rank the approaches that you select, including other approaches you have added.

Please select all approaches that apply to your institution(s):

- Offering a series of open source, online, short courses on QIS fundamentals developed by DOE scientists and engineers.
- Supporting faculty with research and training opportunities at DOE laboratories to build knowledge and teaching capacity.
- Having DOE scientists/engineers provide special topic lectures at a university.
- Other (please explain).

(7) The hands-on training opportunities at the DOE national laboratories, such as laboratory-based experiences and short courses on technical knowledge and skills, offer students and faculty unique possibilities for their professional development and career preparation that are often not available at home institutions. Please indicate to what extent (High, Medium, or Low) the opportunities listed below can contribute to preparing your students to enter the future QIS workforce.

Benefits for Preparing Students

- Access to the unique QIS equipment, facilities, and instruments available at the DOE national labs .
- Working side-by-side with world leading QIS experts.
- Working in a multi-disciplinary team to solve complex real-world problems.
- Test-driving career options and building network with scientific, technical, and administrative staff at the DOE national labs.

(8) Please describe any additional types of training opportunities that DOE might provide or identify any models that you are aware of that could be used for preparing students at your institution to enter the future QIS workforce. For each opportunity or model, please include the following information:

- Academic level (undergraduate or graduate);
- Description of the opportunity or model, and if there is an existing program that provides such an opportunity (please provide name and website of existing program, if available).

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Note that comments will be made publicly available as submitted.

Signing Authority

This document of the Department of Energy was signed on February 22, 2023, by Asmeret Asefaw Berhe, Director, Office of Science, pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–04520 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of cancellation of open meeting.

SUMMARY: On February 17, 2023, the Department of Energy published a notice of open meeting announcing a meeting on March 16, 2023, of the Environmental Management Site-Specific Advisory Board, Paducah. This notice announces the cancellation of this meeting.

DATES: The meeting scheduled for March 16, 2023, announced in the February 17, 2023, issue of the **Federal Register** (FR Doc. 2023–03441, 88 FR 10313), is cancelled.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

Signed in Washington, DC, on February 23, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–04511 Filed 3–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23–78–000; CP23–79–000; CP17–21–003.

Applicants: Port Arthur Pipeline, LLC, Texas Connector Pipeline, LLC.

Description: Joint Abbreviated Application of Port Arthur Pipeline, LLC to Abandon Facilities by Transfer and to Amend Certificate, and of Texas Connector Pipeline, LLC for Certificates of Public Convenience and Necessity.

Filed Date: 2/27/23.

Accession Number: 20230227–5279.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: CP23–80–000; CP23–81–000; CP21–44–002.

Applicants: LA Storage, LLC, Gillis Hub Pipeline, LLC.

Description: Joint Abbreviated Application of LA Storage, LLC to Abandon Facilities and Services and to Amend Certificate, and of Gillis Hub Pipeline, LLC for Certificates of Public Convenience and Necessity.

Filed Date: 2/27/23.

Accession Number: 20230227–5280.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: PR23–34–000.

Applicants: Permian Highway Pipeline LLC.

Description: § 284.123 Rate Filing: Fuel Filing 04.01.23 to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227–5159.

Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: RP23–469–000.

Applicants: Sabine Pipe Line LLC.

Description: § 4(d) Rate Filing: Normal Section 5 22—rate changes 2023 to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227–5197.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–470–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (Pioneer Apr-June 2023) to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227–5200.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–471–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.204: Negotiated Rate Agreements Filing (Salt Creek_Tenaska) to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227–5205.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–472–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Mar 1 2023 Releases to be effective 3/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5021.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–473–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—February 28, 2023 Nonconforming Service Agreements to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5028.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–474–000.

Applicants: Cove Point LNG, LP.

Description: § 4(d) Rate Filing: Cove Point—2023 Annual EPCA to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5029.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–475–000.

Applicants: Cove Point LNG, LP.

Description: § 4(d) Rate Filing: Cove Point—2023 Annual Fuel Retainage to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5030.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–476–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: CIG Qtly LUF and Semi-Annual Fuel Filing Feb 2023 to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5046.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–477–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2023 Daggett Surcharge to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5047.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–478–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: 2023 NEXUS ASA Filing to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5053.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–479–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: 2023 Summer Fuel Filing to be effective 4/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5062.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–480–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agmt Update (Conoco—Mar 23) to be effective 3/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5067.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–481–000.

Applicants: Rover Pipeline LLC.

Description: Compliance filing: Rover 2022 AMPS Filing to be effective N/A.

Filed Date: 2/28/23.

Accession Number: 20230228–5071.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–482–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Mar 2023 to be effective 3/1/2023.

Filed Date: 2/28/23.

Accession Number: 20230228–5074.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–483–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: North Seattle and South Seattle Annual Charges Update Filing 2023 to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5075.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–484–000.
Applicants: Rager Mountain Storage Company LLC.
Description: § 4(d) Rate Filing: Post Closing Cycle Adjustments to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5099.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–485–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20230228 Negotiated Rate to be effective 3/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5107.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–486–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Misc Tariff Filing February 2023 to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5112.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–487–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Non Conforming Negotiated Rate Update (Citadel 217275 Apr 23) to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5133.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–488–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: 2023 Annual Transco Fuel Tracker to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5151.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–489–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: ESNG Tariff Housekeeping to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5156.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–490–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: AVC Storage Loss Retainage Factor Update—2023 to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5174.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–491–000.
Applicants: Rockies Express Pipeline LLC.
Description: Compliance filing: REX 2023–02–28 Fuel and L&U Reimbursement Percentages and Power Cost Charges to be effective N/A.
Filed Date: 2/28/23.
Accession Number: 20230228–5185.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–492–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2023–02–28 Negotiated Rate Agreement to be effective 3/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5187.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23–493–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: RP 2023–02–28 Negotiated Rate Agreements to be effective 4/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5191.
Comment Date: 5 p.m. ET 3/13/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP19–57–006.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing: AGT Ramapo Verplank Delivery Surcharge 2023 to be effective 3/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5143.
Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP21–1187–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: Refund Report: EGTS—Refund Report to be effective N/A.
Filed Date: 2/28/23.
Accession Number: 20230228–5049.
Comment Date: 5 p.m. ET 3/13/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04535 Filed 3–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10939–002]

James B. Adkins, Secesh United, LLC; Notice of Transfer of Exemption

1. On February 13, 2023, James B. Adkins, exemptee for the 45-kilowatt Zena Creek Ranch Hydroelectric Project No. 10939, filed a letter notifying the Commission that the project was transferred from James B. Adkins to Secesh United, LLC. The exemption from licensing was originally issued on December 27, 1990.[1] The project is located on the Secesh River, Valley County, Idaho. The transfer of an exemption does not require Commission approval.

2. Secesh United, LLC is now the exemptee of the Zena Creek Ranch Hydroelectric Project No. 10939. All correspondence must be forwarded to Ms. Deborah Kane, Managing Member, Secesh United, LLC, 5055 SE 34th Avenue, Portland, OR 97202.

Dated: February 27, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04453 Filed 3–3–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *James B. Adkins,* 53 FERC ¶ 62,275 (1990).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–3–000]

Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements; Notice Requesting Post-Workshop Comment

On December 5 and 6, 2022, Federal Energy Regulatory Commission (Commission) staff convened a workshop to discuss whether and how the Commission could establish a minimum requirement for Interregional Transfer Capability for public utility transmission providers in transmission planning and cost allocation processes.

All interested persons are invited to file post-workshop comments on issues raised during the workshop that they believe would benefit from further discussion. In addition to addressing the questions listed in the Supplemental Notice,[1] parties are also invited to provide comments on the questions listed below. Commenters need not respond to all topics or questions asked.

Commenters may reference material previously filed in this docket, including the workshop transcript, but are encouraged to avoid repetition or replication of previous material. In addition, commenters are encouraged, when possible, to provide examples and quantitative data in support of their answers. Comments must be submitted on or before 75 days from the date of this notice and reply comments are due 120 days from the date of this notice.

Comments may be filed electronically via the internet.[2] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

For more information about this Notice, please contact:

Jessica Cockrell (Technical Information), Office of Energy Policy and Innovation, (202) 502–8190, *Jessica.Cockrell@ferc.gov*

Moon Athwal (Legal Information), Office of the General Counsel, (202) 502–6272, *Moon.Athwal@ferc.gov*

Dated: February 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04534 Filed 3–3–23; 8:45 am]

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[1] *Supplemental Notice of Staff-Led Workshop,* Docket No. AD23–3–000 (Nov. 30, 2022); *see also Errata Notice,* Docket No. AD23–3–000 (Dec. 2, 2022) (Supplemental Notices).

[2] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4440–002]

Central Virginia Electric Cooperative, Harris Bridge Hydro LLC; Notice of Transfer of Exemption

1. On August 2, 2022, Central Virginia Electric Cooperative, exemptee for the 400-kilowatt Harris Bridge Hydroelectric Project No. 4440, filed a letter notifying the Commission that the project was transferred from Central Virginia Electric Cooperative to Harris Bridge Hydro LLC. The exemption from licensing was originally issued on March 15, 1982.[1] The project is located on the Rockfish River, Nelson County, Virginia. The transfer of an exemption does not require Commission approval.

2. Harris Bridge Hydro LLC is now the exemptee of the Harris Bridge Hydroelectric Project No. 4440. All correspondence must be forwarded to Mr. Frederic Reveiz, Managing Member, Harris Bridge Hydro LLC, 5425 Wisconsin Avenue, Suite 600, Chevy Chase, Maryland 20815, Phone: 202–361–2092, Email: *Frederic.Reveiz@asilea.com.*

Dated: February 27, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04450 Filed 3–3–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Rockfish Corporation,* 18 FERC ¶ 62,449 (1982). On November 13, 2012, the project was transferred to Central Virginia Electric Cooperative.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–86–000.
Applicants: Nestlewood Solar I LLC.
Description: Nestlewood Solar I LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/28/23.
Accession Number: 20230228–5220.
Comment Date: 5 p.m. ET 3/21/23.

Docket Numbers: EG23–87–000.
Applicants: North Central Valley Energy Storage, LLC.
Description: North Central Valley Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/28/23.
Accession Number: 20230228–5229.
Comment Date: 5 p.m. ET 3/21/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–539–001.
Applicants: Morongo Transmission LLC.
Description: Compliance filing: Deficiency Response in Docket ER23–539 to be effective 1/1/2023.
Filed Date: 2/27/23.
Accession Number: 20230227–5223.
Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: ER23–577–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of Amended ISA, SA No. 2360, Queue No. AD2–133/Q36 Docket No. ER23–577 to be effective 2/6/2023.
Filed Date: 2/27/23.
Accession Number: 20230227–5187.
Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: ER23–882–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Amended ISA and ICSA, SA Nos. 5366 and 5367; Queue No. AB2–161 to be effective 3/20/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5101.
Comment Date: 5 p.m. ET 3/21/23.

Docket Numbers: ER23–940–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of Amended WMPA, SA No. 5294; Queue No. AC2–120 in Docket No. ER23–940 to be effective 3/27/2023.

Filed Date: 2/28/23.
Accession Number: 20230228–5200.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–962–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of Amended ISA, SA No. 6116; Queue No. AE1–129 in Docket No. ER23–962 to be effective 3/28/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5215.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1189–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA and ICSA, Service Agreement Nos. 6810 and 6811; Queue No. AE1–179 to be effective 1/30/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5044.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1190–000.
Applicants: Ohio Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Ohio Power Company submits tariff filing per 35.13(a)(2)(iii: AEP and METC submit Amended and Restated Interconnection Agreement, SA No. 4251 to be effective 12/21/2019.
Filed Date: 2/28/23.
Accession Number: 20230228–5068.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1191–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: CCSF Warnerville Substation WPA (TO SA 284) to be effective 1/26/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5184.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1192–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 316, Interconnection Agreement with AEPCO at Saguaro to be effective 4/30/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5223.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1194–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 409, HV Sunrise LLC LGIA to be effective 1/30/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5235.
Comment Date: 5 p.m. ET 3/21/23.
Docket Numbers: ER23–1195–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–02–28_DIR vis-à-vis Ramp Capability Products Filing to be effective 6/1/2023.
Filed Date: 2/28/23.
Accession Number: 20230228–5254.
Comment Date: 5 p.m. ET 3/21/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04536 Filed 3–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–72–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on February 17, 2023, National Fuel Gas Supply Corporation (National Fuel) 6363 Main Street, Williamsville, New York 14221, filed a prior notice request pursuant to Sections 157.205, 157.208, and 157.213 of the Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP83–4–000,[1] requesting authorization to construct and operate its Lawtons Well 7459 Project that consists of one new injection/withdrawal storage well, related pipeline and appurtenances at its Lawtons Storage Field in Erie County, New York. The new well is proposed to improve the deliverability of the field, to allow more efficient withdrawal of inventory. National Fuel states that the Lawtons Well 7459 Project will have no impact on the Lawtons Storage Field's certificated physical parameters. The estimated cost of the project is approximately $2.91 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to Alice A. Curtiss, Deputy General Counsel for National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221; by phone at (716) 857–7075, or by email to *curtissa@natfuel.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on April 28, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the

[1] *National Fuel Gas Supply Corporation,* 21 FERC ¶ 62,298 (1982).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is April 28, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is April 28, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 28, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the project docket number CP23–72–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.'' The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the project docket number CP23–72–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Alice A. Curtiss, Deputy General Counsel for National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221; or by email to *curtissa@natfuel.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 27, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04451 Filed 3–3–23; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–17–000]

Commission Information Collection Activities (FERC–549); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–549 (NGPA Section 311 Transactions, NGA Blanket Certificate Transactions, and Market-Based Rates for Storage) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due April 5, 2023.

ADDRESSES: Send written comments on FERC–549 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

identify the OMB control number (1902–0086) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–17–000) to the Commission as noted below. Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain*; Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: NGPA Section 311 Transactions and NGA Blanket Certificate Transactions.

OMB Control No.: 1902–0086.

Type of Request: Three-year extension of the FERC–549 information collection requirements with a revision to account for the differences between filings seeking initial approval and those disclosing a change in circumstances.

Abstract: FERC–549 is required to implement portions of the following statutory provisions: (1) Section 311 of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3371); (2) Section 4(f) of the Natural Gas Act (NGA) (15 U.S.C. 717c(f)); and (3) Section 7 of the NGA (15 U.S.C. 717f). The reporting requirements for implementing these provisions are contained in 18 CFR part 284.

Transportation by Interstate Pipelines for Intrastate Pipelines and Local Distribution Companies

Under section 311(a)(1) of the NGPA and 18 CFR 284.101 and 284.102, any interstate pipeline may transport natural gas without prior Commission approval ''on behalf of'' an intrastate pipeline or a local distribution company (LDC). The regulation at 18 CFR 284.102(d) provides that the transportation is not ''on behalf of'' an intrastate pipeline or an LDC unless one of three conditions is met:

(1) The interstate pipeline or LDC has physical custody of and transports the natural gas at some point;

(2) The intrastate pipeline or LDC holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as a local distribution company; or

(3) The gas is delivered at some point to a customer that either is located in an LDC's service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and the LDC or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service.

The certification requirement in the third condition described at 18 CFR 284.102(d)(3) is included in the burden table (below) as part of the information collection activity labeled ''Transportation by Pipelines.'' Before commencing service as described in paragraph (d)(3), the interstate pipeline that is providing the transportation must receive certification from the pertinent LDC or intrastate pipeline consisting of a letter from the intrastate pipeline or LDC authorizing the interstate pipeline to ship gas on its behalf, and sufficient information to verify that the service qualifies under 18 CFR 284.102.

For firm service and for release transactions, the regulation at 18 CFR 284.13(b)(1) requires the interstate pipeline to post with respect to each contract, or revision of a contract for service, the following information no later than the first nomination under a transaction:

(i) The full legal name of the shipper, and identification number, of the shipper receiving service under the contract, and the full legal name, and identification number, of the releasing shipper if a capacity release is involved or an indication that the pipeline is the seller of transportation capacity;

(ii) The contract number for the shipper receiving service under the contract, and, in addition, for released transactions, the contract number of the releasing shipper's contract;

(iii) The rate charged under each contract;

(iv) The maximum rate, and for capacity release transactions not subject to a maximum rate, the maximum rate that would be applicable to a comparable sale of pipeline services;

(v) The duration of the contract;

(vi) The receipt and delivery points and the zones or segments covered by the contract, including the location name and code adopted by the pipeline in conformance with 18 CFR 284.13(f) for each point, zone or segment;

(vii) The contract quantity or the volumetric quantity under a volumetric release;

(viii) Special terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

(ix) Whether there is an affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper.

(x) Whether a capacity release is a release to an asset manager as defined in 18 CFR 284.8(h)(3) and the asset manager's obligation to deliver gas to, or purchase gas from, the releasing shipper.

(xi) Whether a capacity release is a release to a marketer participating in a state-regulated retail access program as defined in 18 CFR 284(h)(4).

For interruptible service, the regulation at 18 CFR 284.13(b)(2) requires the interstate pipeline to post on a daily basis no later than the first nomination for service under an interruptible agreement, the following information:

(i) The full legal name, and identification number, of the shipper receiving service;

(ii) The rate charged;

(iii) The maximum rate;

(iv) The receipt and delivery points between which the shipper is entitled to transport gas at the rate charged, including the location name and code adopted by the pipeline in conformance

with 18 CFR 284.13(f) for each point, zone, or segment;

(v) The quantity of gas the shipper is entitled to transport;

(vi) Special details pertaining to the agreement, including conditions applicable to a discounted transportation contract and all aspects in which the agreement deviates from the pipeline's tariff.

(vii) Whether the shipper is affiliated with the pipeline.

Transportation by Intrastate Pipelines for Interstate Pipelines or LDCs Served by an Interstate Pipeline

Under section 311(a)(2) of the NGPA and 18 CFR 284.122 and 284.123, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of any interstate pipeline or any LDC served by an interstate pipeline. No rate charged for such transportation may exceed a fair and equitable rate. The filing requirements described below are included in the burden table (below) as part of the information collection activity labeled ''Transportation by Pipelines.''

The regulation at 18 CFR 284.123(b) provides that intrastate gas pipeline companies must file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service or file proposed rates and supporting information showing the rates are cost based and are fair and equitable. It is the Commission policy that each pipeline must file at least every five years to ensure its rates are fair and equitable. Depending on the business process used, either 60 or 150 days after the application is filed, the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

The regulation at 18 CFR 284.123(e) requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change in operations or change in rate election.

Initial Approval of Market-Based Rates for Storage

Section 4(f) of the NGA authorizes the Commission to permit natural gas storage service providers to charge market-based rates for storage, subject to conditions and requirements set forth in the statute. The Commission implements this authority under 18 CFR 284.501 through 284.505. An applicant may apply for market-based rates by filing a request for a market-power determination that complies with the following:

(a) The applicant must set forth its specific request and adequately demonstrate that it lacks market power in the market to be served, and must include an executive summary of its statement of position and a statement of material facts in addition to its complete statement of position. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

The regulation at 18 CFR 284.503 requires that an application to charge market-based rate for storage services must include: (1) A description of the geographic markets for storage services in which the applicant seeks to establish that it lacks significant market power; (2) The product market or markets for which the applicant seeks to establish that it lacks significant market power; (3) A description of the applicant's own facilities and services, and those of all parent, subsidiary, or affiliated companies, in the relevant markets; (4) A description of available alternatives in competition with the applicant in the relevant markets and other competition constraining the applicant's rates in those markets; (5) A description of potential competition in the relevant markets; (6) A general system map and maps by geographic markets; (7) The calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index; (8) A description of any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets; (9) The proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing.

Market Based-Rates—Notice of Change in Circumstances

The Commission's regulations at 18 CFR 284.504 (b) provide that a storage service provider granted the authority to charge market-based rates is required to notify the Commission within 10 days of acquiring knowledge of significant change occurring in its market power status. The notification should include a detailed description of the new facilities/services and their relationship to the storage service provider. Significant changes include: (1) The storage provider expanding its storage capacity beyond the amount authorized; (2) The storage provider acquiring transportation facilities or additional storage capacity; (3) An affiliate providing storage or transportation services in the same market area; and (4) The storage provider or an affiliate acquiring an interest in or is acquired by an interstate pipeline.

Record Retention

The Commission's regulations at 18 CFR 284.288(b) and 284.403(b), respectively, impose a record retention requirement contained in a Code of Conduct applicable to: (1) interstate pipelines that provide unbundled natural gas sales service,[1] and (2) persons who are not interstate pipelines and whose sales of natural gas are authorized by the ''automatic'' blanket marketing certificate granted by operation of 18 CFR 284.402.[2] Any entity fitting one of those descriptions must retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

FERC uses these records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with 18 CFR 1c.1 (''Prohibition of Natural Gas Market Manipulation'') and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules,

[1] As defined at 18 CFR 284.282(c), unbundled sales service is gas sales service that is sold separately from transportation service.

[2] The regulation at section 284.402(a) provides that any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity, pursuant to section 7 of the NGA, that authorizes the certificate holder to make sales for resale of natural gas at negotiated rates in interstate commerce. Section 2(1) of the NGA (15 U.S.C. 717a(1)) defines a ''person'' to include an individual or corporation.

regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission would have difficulty performing its regulatory functions to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders. The Code of Conduct Record Retention burden [3] associated with the FERC–549 includes both labor [4] and storage costs. The labor costs are shown in Table 1, below. The storage costs are shown below in Table 2.

Type of Respondents: Jurisdictional interstate and intrastate natural gas pipelines.

Estimate of Annual Burden: [5] The Commission estimates the annual burden and labor costs for the information collection as shown in the following table.

TABLE 1—FERC–549: ESTIMATED LABOR COSTS FOR NGPA SECTION 311 TRANSACTIONS, NGA BLANKET CERTIFICATE TRANSACTION, AND RECORD RETENTION

	Number of respondents (A)	Annual number of responses per respondent (B)	Total number of responses (C) (Column A × Column B)	Average burden hrs. & cost ($) [6] per response (D)	Total annual burden hours & total annual cost ($) (E) (Column C × Column D)	Cost per respondent ($) (F) (Column E ÷ Column A)
Transportation by Pipelines.	43	2	86	50 hrs.; $4,550	4,300 hrs.; $391,300	$9,100
MBR—Initial Approval	1	1	1	350 hrs.; $31,850	350 hrs.; $31,850	31,850
MBR—Change in Circumstances [7].	5	1	5	75 hrs.; $6,825	375 hrs.; $6,825	1,365
Record Retention	299	1	299	1 hr.; $38.71	299 hrs.; $11,574.29	38.71
Totals	348		391		5,324 hrs.; $441,549	

Storage Cost: [8] In addition to the labor costs for record retention, non-labor costs of record retention and storage are estimated as follows:

- *Paper storage costs (using an estimate of 12.5 cubic feet × $6.46 per cubic foot):* $80.75 per respondent annually. Total annual paper storage cost to industry ($80.75 × 299 respondents): $24,144.25. This estimate assumes that a respondent stores 12.5 cubic feet of paper. We expect that this estimate should trend downward over time as more companies move away from paper storage and rely more heavily on electronic storage.
- *Electronic storage costs:* $3.18 per respondent annually. Total annual electronic storage cost to industry ($3.18 × 299 respondents): $950.82. This calculation estimates storage of approximately 200 MB per year with a cost of $3.18 per respondent.

TABLE 2—STORAGE COSTS ASSOCIATED WITH RECORD RETENTION

	Total number of responses (A)	Cost per response (B)	Total annual cost (rounded) (C) (Column A × Column B)
Paper Storage	299	$80.75	$24,144
Electronic Storage	299	3.18	951
Total Storage Burden			25,095

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[3] 18 CFR 284.288(b) and 18 CFR 284.403(b).

[4] The $35.83 hourly cost figure comes from the average cost (wages plus benefits) of a file clerk (Occupation Code 43–4071) as posted on the BLS website (*http://www.bls.gov/oes/current/naics2_22.htm*).

[5] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[6] For the information collection activities labeled ''Transportation by Pipelines,'' ''MBR—Initial Approval,'' and ''MBR—Change in Circumstances,'' Commission staff estimates that respondents' hourly labor cost is approximated by the Commission's average hourly cost (for wages and benefits) for 2022, or $91.00 per hour.

For the information collection activity labeled ''Record Retention,'' Commission staff estimates that respondents' hourly labor cost is $38.71 (for wages and benefits), based on $27.24 (the mean hourly wage for an information and record clerk, Occupation Code 43–4000 for Utilities as posted at *http://www.bls.gov/oes/current/naics2_22.htm*), plus $11.47 (the average hourly cost for benefits for private industry, as posted at *https://www.bls.gov/news.release/pdf/ecec.pdf*.

[7] This new row was added to account for the differences between initial MBR filings and filings pertaining to a change in circumstances.

[8] Each of the 299 entities is assumed to have both paper and electronic record retention. Internal analysis assumes 50 percent paper storage and 50 percent electronic storage.

Dated: February 27, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04452 Filed 3–3–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 21, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Lisa Elsenbast, Minneapolis, Minnesota, individually and as co-trustee with Annette Sarazine-Jensen, Omaha, Nebraska, Monica Anderegg, Edina, Minnesota, and Julia T. Sarazine, Chicago, Illinois, of the Charles L. Sarazine 2022 Trust Agreement, Minneapolis, Minnesota; and Maryanna Sarazine, Algona, Iowa;* to become members of the Spies-Sarazine Family Control Group, a group acting in concert to retain voting shares of Emmetsburg Bank Shares, Inc., and thereby indirectly retain voting shares of Iowa Trust & Savings Bank, both of Emmetsburg, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–04512 Filed 3–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–22IV]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STARnet) Living with Muscular Dystrophy Questionnaire'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 23, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STARnet) Living with Muscular Dystrophy Questionnaire—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since its establishment in 2002, the MD STARnet has been a population-based surveillance system that aims to identify and collect clinical data on individuals with muscular dystrophy (MD) in select surveillance areas. MD STARnet identifies and collects data on individuals with MD at sources including healthcare facilities where patients with MD receive care and administrative datasets such as vital records and hospital discharge data. Although MDs are rare genetic diseases with an estimated prevalence of 16.1/100,000, they have a high impact on affected individuals, their families, and society. MDs can be classified into nine major groups: Duchenne MD (DMD), Becker MD (BMD), myotonic dystrophy (DM), facioscapulohumeral muscular dystrophy (FSHD), limb-girdle MD (LGMD), Congenital MD (CMD), Emery-Dreifuss MD (EDMD), Oculopharyngeal MD (OPMD), and distal MD. A recent MD STARnet study has estimated the combined prevalence for DMD and BMD to be 1.92–2.48/10,000 males age 5–9 years old. MD STARnet aims to improve understanding of MDs and ultimately the quality of life of individuals and their families living with MD.

Individuals with MD frequently report pain and fatigue, but studies have primarily been conducted in single clinics and limited to the three most common MDs (DMD, DM, and FSHD).

Population-based studies are needed to describe the frequency and management of pain and fatigue and their impact on the lives of individuals with various types of MD. The purpose of the proposed study is to describe the epidemiology of COVID–19 and flu and the experience with pain, fatigue, pregnancy, and infertility for adults living with MD who are identified through MD STARnet. Information will be collected at the seven MD STARnet surveillance sites and will occur primarily via a survey of adult men and women with muscular dystrophy. The survey will primarily be web-based, but a paper version and phone interview will be provided to accommodate participant preferences. The estimated burden per response for the MD STARnet Men Living with Muscular Dystrophy Survey is 15 minutes. The MD STARnet Women Living with Muscular Dystrophy Survey includes additional questions about pregnancy and infertility, and the estimated burden per response is 20 minutes.

Results generated from the study will provide a better understanding of: (1) the occurrence, testing, treatment and severity of COVID–19 in relation to MD; (2) vaccination status and reasons for not receiving COVID–19 and flu vaccinations; (3) the frequency, intensity, and management of pain and fatigue; and (4) the effect of having MD on pregnancy and fertility on adults living with MD. Ultimately, this information can be used to develop interventions that improve the lives of people with MD and their families.

CDC requests OMB approval for two years. The total estimated annualized burden is 292 hours. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Males 18 and over	MD STARnet Men Living with Muscular Dystrophy Survey.	538	1	15/60
Adult Females 18 and over	MD STARnet Women Living with Muscular Dystrophy Survey.	472	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–04492 Filed 3–3–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23–1204; Docket No. CDC–2023–0013]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed data collection titled Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS). The ACBS is an in-depth asthma survey conducted on a subset of BRFSS respondents with an asthma diagnosis with the goal to strengthen the existing body of asthma data and to address critical questions surrounding the health and experiences of persons with asthma.

DATES: Written comments must be received on or before May 5, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0013 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS) (OMB Control No. 0920–1204, Exp. 11/30/2023)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC's National Center for Environmental Health (NCEH) is requesting a three-year Paperwork Reduction Act (PRA) clearance to revise and continue to collect information under the Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS) (OMB Control No. 0920–1204, Exp. 11/30/2023). The ACBS is funded by the NCEH National Asthma Control Program (NACP) in the Asthma and Community Health Branch (ACHB).

The ACBS is a follow-up survey on asthma and is administered on behalf of NCEH by the CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) BRFSS Program. The BRFSS (OMB Control No. 0920–1061, Exp. 12/31/2024) is a nationwide system of customized, cross-sectional telephone health surveys. The BRFSS information collection is conducted in a continuous, three-part telephone interview process: (1) screening; (2) participation in a common BRFSS core survey, and (3) participation in optional question modules that states use to customize survey content. BRFSS coordinators in the health departments in U.S. states, territories, and the District of Columbia (collectively referred to as ''states'' and ''jurisdictions'') are responsible for both the BRFSS and the ACBS administration. The ACBS is conducted within two days after the BRFSS survey.

The purpose of ACBS is to gather state-level asthma data and to make them available to track the burden of the disease, to monitor adherence to asthma guidelines, and to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Beyond asthma prevalence estimates, for most states, the ACBS provides the only source of adult and child asthma data on the state and local level.

Data collection for ACBS involves screening, obtaining permission, consenting, and telephone interviewing on a subset of the BRFSS respondents from participating states. The ACBS eligible respondents are BRFSS adults, 18 years and older, who report ever being diagnosed with asthma. In addition, some states include children, below 18 years of age, who are randomly selected subjects in the BRFSS household. Parents or guardians serve as ACBS proxy respondents for their children ever diagnosed with asthma. If both the BRFSS adult respondent and the selected child in the household have asthma, then only one or the other is eligible for the ACBS.

State BRFSS Coordinators submit de-identified data files to CDC on a monthly or quarterly basis for cleaning and weighting. The CDC BRFSS ACBS operation team returns clean, weighted data files to the state of origin for its use. The ACBS adds considerable state-level depth to the existing body of asthma data. It addresses critical questions surrounding the health and experiences of persons with asthma. Health data include symptoms, environmental factors, and medication use among persons with asthma. Data on their experiences include activity limitation, health system use, and self-management education. These asthma data are needed to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Federal agencies and other entities also rely on this critical information for planning and evaluating efforts and to reduce the burden from this disease. The CDC makes annual ACBS datasets available for public use and provides guidance on statistically appropriate uses of the data.

Over the past three years, in response to the 2020 Terms of Clearance, the annual joint response rates from BRFSS and ACBS were reported with ACBS annual datasets. To communicate the caveats of state-to-state comparisons, the ACBS nonresponse bias and impact on prevalence estimation were analyzed and reported as appendix tables in the annual data quality report released with the public use dataset for adult and child participants (*https://www.cdc.gov/brfss/acbs/2020/pdf/sdq_report_acbs_20-508.pdf*). The first table reports unweighted and weighted demographic distribution percentages for each participating state based on BRFSS-eligible asthma respondents, non-responding to the ACBS, and ACBS final completes. The second table reports estimated current asthma percentage among individuals who have ever been diagnosed with asthma. These two tables will help communicate the potential impact of nonresponse bias on the ACBS published dataset.

Furthermore, we revised the tables of prevalence estimates for asthma risk factors based on ACBS, reduced the number of risk factors prevalence tables from 20 to 13, and deleted the tables on active asthma related risk factors, which did not provide enough information to make state-to-state comparisons. A hyperlink to the nonresponse report have been included in the footnote for annual ACBS risk factors prevalence tables. The updated tables are available at: (*https://www.cdc.gov/brfss/acbs/2020_tables_LLCP.html*).

The NACP undertook efforts to streamline the ACBS, to reduce unnecessary burden, and to ensure that the question wording is synchronized with more recent studies. The questionnaires were re-evaluated by ACBS questionnaire working groups and the ACBS recipients. Question changes and additions to the 2024 ACBS questionnaire are as follows. A proposed total of six questions will be deleted from the adult's questionnaire and 17 questions will be deleted from the child's questionnaire. With the addition of nine new questions to the adult's questionnaire and 10 questions to the child's questionnaire, the estimated time burden for the interview will remain unchanged from that of the 2021 questionnaire (10 minutes per response).

The total BRFSS sample size was reduced from 476,217 in 2016 to 393,474 in 2020. As the result of decreasing BRFSS sample size, the number of eligible ACBS's BRFSS respondents changed from 46,100 to 41,444 from 2016 to 2020. Although no revisions to the number of responses per respondent nor to the average time burden per response are requested, the NACP proposes the following changes to the burden estimation from 2021 (based on 2016 ACBS response data) to 2024 (based on 2020 response data). The total number of respondents is 58,292, which is a decrease of 10,554 from the previously approved 68,846. The total estimated annualized time burden is 6,073 hours, which is a decrease of 542 hours from the previously approved 6,615 hours. Participation in the ACBS is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
BRFSS Adults	ACBS Landline Screener—Adult	8,170	1	1/60	136
	ACBS Cell Phone Screener—Adult	20,780	1	1/60	346
BRFSS Parents or Guardians of Children.	ACBS Landline Screener—Child	834	1	2/60	28
	ACBS Cell Phone Screener—Child	4,109	1	2/60	137
ACBS Adults	ACBS Adult Consent and Survey	20,155	1	10/60	3,359
ACBS Parents or Guardians of Children.	ACBS Child Consent and Survey	3,764	1	10/60	627
State BRFSS Coordinators	ACBS Data Submission Layout	40	12	3	1,440
Total					6,073

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–04491 Filed 3–3–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0950]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is submitting the information collection request titled ''The National Health and Nutrition Examination Survey (NHANES)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 21, 2022 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES), (OMB Control No. 0920–0950, Exp. 04/30/2023)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

The National Health and Nutrition Examination Survey (NHANES) is designed to study the relationship between diet, nutrition, and health in a representative sample of the civilian, non-institutionalized population of the United States. Information collection involves a variety of modes and sources including physical examinations, laboratory tests, and interviews. Findings are used to produce descriptive statistics that measure the health and nutrition status of the general population, generate national reference data on height, weight, and nutrient levels in the blood, and monitor the prevalence of chronic conditions and risk factors for those conditions.

The NHANES was conducted periodically between 1970 and 1994 and has been conducted continuously since 1999 by the NCHS, CDC, in collaboration with a variety of agencies that sponsor specific components of NHANES. To manage participant burden and respond to changing public health research needs, NCHS cycles in and out various components, however, the study design generally allows results from more recent NHANES to be compared to findings reported from previous surveys. NCHS collects personally identifiable information (PII) to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services. Participant-level data items include basic demographic information, name, address, Social Security Number, Medicare number and participant health information.

Data collection for the 2021/2022 cycle of NHANES began in August 2021. The 2021/2022 NHANES physical examination includes the following components: anthropometry (all ages), liver elastography (ages 12 and older), standing balance (ages 20–69), 24-hour dietary recall via phone (all ages), blood pressure measurement (ages eight and older), and dual X-ray absorptiometry (DXA) (ages 8–69, total body scan). While at the examination center, additional interview questions are asked of participants and a second 24-hour dietary recall (all ages) is scheduled to be conducted by phone 3–10 days later. The bio specimens collected for laboratory tests include urine and blood. Serum, plasma and urine specimens are stored for future testing, including genetic research, if the participant consents. Consent to store DNA is continuing in NHANES.

Beginning in 2021, NHANES added the following laboratory tests: Acetylcholinesterase Enzyme Activity in whole blood; an Environmental Toxicant in Washed Red Blood Cells (Hemoglobin Adducts); Environmental Toxicants in serum (seven terpenes); Environmental Toxicants in urine (seven volatile organic compound (VOC) metabolites); Infectious Disease Markers in serum (Enterovirus 68 (EV–D68) and Human Papilloma Virus (HPV) in serum); Nutritional Biomarkers in plasma (Four trans-fatty acids (TFA)); and two Nutritional Biomarkers in serum. Additionally, at the start of the 2021 survey year, the following Laboratory Tests were modified: Steroid hormones in serum (eleven steroid hormones).

NHANES components that were cycled out in 2021–22 are the Blood Pressure Methodology Study and laboratory tests of Adducts of Hemoglobin (Acrylamide, Glycidamide) and Urine flow rate.

Most sections of the NHANES interviews provide self-reported information to be used in combination with specific examination or laboratory content, as independent prevalence estimates, or as covariates in statistical analysis (*e.g.,* socio-demographic characteristics). Some examples include alcohol, drug, and tobacco use, sexual behavior, prescription and aspirin use, and indicators of oral, bone, reproductive, and mental health. Several interview components support the nutrition-monitoring objective of NHANES, including questions about food security and nutrition program participation, dietary supplement use, and weight history/self-image/related behavior.

Burden for individuals varies based on their level of participation. For example, infants and children tend to have shorter interviews and exams than adults. This is because young people may have fewer health conditions or medications to report so their interviews take less time or because certain exams are only conducted on individuals 18 and older, etc. In addition, adults often serve as proxy respondents for young people in their families. Finally, the burden estimate for NHANES includes developmental projects that support the planning process for future cycles of information collection. Developmental projects may include activities such as tests of new equipment, crossover studies between current and proposed methods, test of different study modes, settings or technology, outreach materials, incentive strategies, sample storage and processing or sample designs.

The 2021/2022 cycle of NHANES includes a number of modifications necessitated by the ongoing COVID–19 pandemic, such as additional COVID–19 screening tests and procedures, additional laboratory content for COVID–19 serology, decreased use of in-person interviews, and increased use of telephone interviews and/or audio-computer assisted self-interview (ACASI). Selected data collection components were discontinued from the NHANES survey and physical exams in order to manage participant risk and burden. Some modifications were described in the Revision request for NHANES 2021/2022 and further adjustments were incorporated through the Change Request mechanism.

The COVID–19 pandemic also resulted in operational delays. CDC therefore requests OMB approval to extend information collection for 18 months in order to complete the 2021/2022 NHANES as previously approved, with the COVID–19 modifications such as multi-mode screening and electronic consent procedures. The base sample will remain at approximately 5,000 interviewed and examined individuals annually. The yearly goal for interview, exam and post exam components is 5,600 participants. To achieve this goal, NHANES may need to screen up to 8,300 individuals annually. Participation in NHANES is voluntary and confidential. There is no cost to respondents other than their time. The total estimated annualized burden is 65,630 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals in households	Screener	8,300	1	10/60
Individuals in households	Household Interview	5,600	1	1
Individuals in households	MEC Interview & Examination	5,600	1	2.5
Individuals in households	Telephone Dietary Recall & Dietary Supplements.	5,600	1	1.3
Individuals in households	Flexible Consumer Behavior Survey Phone Follow-Up.	5,600	1	20/60
Individuals in households	Developmental Projects & Special Studies	3,500	1	3
Individuals in households	24-hour wearable device projects	1,000	1	25

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–04493 Filed 3–3–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7070–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) In-Person Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, April 20, 2023 from 8:30 a.m. to 4 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments: Thursday, April 13, 2023 5 p.m. (e.d.t).

ADDRESSES:

Meeting Location: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Walt Gutowski, Jill Darling, Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: This meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://CMS-APOE-April2023.rsvpify.com* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Walt Gutowski, Jill Darling or Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel, which was first chartered in 1999, advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and legislation. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of February 9, 2023, are as follows:

- Julie Carter, Senior Federal Policy Associate, Medicare Rights Center.
- Scott Ferguson, Psychotherapist, Scott Ferguson Psychotherapy.

• Jean-Venable Robertson Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University.
• Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers.
• Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine.
• Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.
• Daisy Kim, Principal Legislative Analyst, University of California System.
• Cheri Lattimer, Executive Director, National Transitions of Care Coalition.
• Cori McMahon, Vice President, Tridiuum.
• Alan Meade, Director of Rehabilitation Services, Holston Medical Group.
• Neil Meltzer, President and CEO, LifeBridge Health.
• Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated.
• Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
• Morgan Reed, Executive Director, Association for Competitive Technology.
• Carrie Rogers, Associate Director, Community Catalyst.
• Margot Savoy, Senior Vice President, American Academy of Family Physicians.
• Congresswoman Allyson Schwartz, Senior Advisor, FTI Consulting.
• Matthew Snider, JD, Senior Policy Analyst, Unidos US.
• Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the April 20, 2023 meeting will include the following:

- Welcome and opening remarks from CMS leadership
- Recap of the previous (February 9, 2023) meeting
- Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations
- An opportunity for public comment
- Meeting adjourned

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Meeting Participation

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the following weblink *https://CMS-APOE-April2023.rsvpify.com,* contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

• Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 1, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–04474 Filed 3–3–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–4040 & CMS–R–297]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 5, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____
Room C4–26–05
7500 Security Boulevard
Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–4040 Request for Enrollment in Supplementary Medical Insurance (SMI)

CMS–R–297 Request for Employment Information

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance (SMI); *Use:* CMS regulations 42 CFR 407.11 lists the CMS–4040 as the application to be used by individuals who are not eligible for monthly Social Security/Railroad Retirement Board benefits or free Part A. The CMS–4040 solicits the information that is used to determine entitlement for individuals who meet the requirements in section 1836 as well as the entitlement of the applicant or their spouses to an annuity paid by OPM for premium deduction purposes. The application follows the application questions and requirements used by SSA. This is done not only for consistency purposes but to comply with other Title II and Title XVIII requirements because eligibility to Title II benefits and free Part A under Title XVIII must be ruled out in order to qualify for enrollment in Part B only. *Form Number:* CMS–4040 (OMB control number: 0938–0245); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 42,011; *Total Annual Responses:* 42,011; *Total Annual Hours:* 10,503. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Use:* The form CMS–L564, also referred to as CMS–R–297, is used, in conjunction with form CMS–40–B, Application for Supplementary Medical Insurance, during an individual's special enrollment period (SEP). Completed by an employer, the CMS–L564 provides proof of an applicant's employer group health coverage. The Social Security Administration (SSA) uses it to obtain information from employers regarding whether a Medicare beneficiary's coverage under a group health plan is based on current employment status. The form is available online via *Medicare.gov* and *CMS.gov* for individuals who are requesting the SEP to obtain and submit to their employer for completion. The employer must complete and sign the form, and submit it to the individual to accompany their enrollment or late enrollment penalty reduction request. The information on the completed form is reviewed manually by SSA. *Form Number:* CMS–R–297 (OMB control number: 0938–0787); *Frequency:* Once; *Affected Public:* Individuals or households, Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 676,526; *Total Annual Responses:* 676,526; *Total Annual Hours:* 56,355. (For policy questions regarding this collection contact Carla Patterson at 410–786–8911.)

Dated: March 1, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–04551 Filed 3–3–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Advisory Committee on Training in Primary Care Medicine and Dentistry

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates to consider for appointment as members of the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD or Committee).

DATES: Written nominations for membership on the ACTPCMD must be received on or before April 30, 2023.

ADDRESSES: Nomination packages must be electronically submitted to the Designated Federal Official, Shane Rogers, at email: *BHWAdvisoryCouncil@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Shane Rogers, Designated Federal Official, Division of Medicine and Dentistry, Bureau of Health Workforce, email *SRogers@hrsa.gov* or call 301–443–5260. A copy of the current committee membership, charter, and reports can be obtained by accessing the ACTPCMD website at *https://www.hrsa.gov/advisory-committees/primarycare-dentist/index.html.*

SUPPLEMENTARY INFORMATION: The ACTPCMD advises and makes recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning the medicine and dentistry activities authorized under the Public Health Service (PHS) Act, as it existed upon the enactment of Section 749 of the PHS Act in 1998. The ACTPCMD also develops, publishes, and implements performance measures, develops and publishes guidelines for longitudinal evaluations, and recommends appropriation levels for programs under Part C of Title VII of the PHS Act. In addition, the Committee provides reports to the Secretary, the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce describing the activities of the Committee.

The ACTPCMD currently focuses on the following primary care professions and disciplines: Family Medicine, General Internal Medicine, General Pediatrics, Physician Assistants, General Dentistry, Pediatric Dentistry, Public Health Dentistry, and Dental Hygiene. The ACTPCMD meets not less than two times each calendar year.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees (SGEs) on ACTPCMD. The Secretary appoints ACTPCMD members with the expertise needed to fulfill the duties of the Committee. The membership requirements are set forth in section 749(b) of the PHS Act (42 U.S.C. 293*l*(b)). Nominees requested for this upcoming cycle include, but are not limited to, representatives from the primary care professions of family medicine, physician assistants, and general dentistry. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to the Committee will be invited to serve for 3 years. Members of the ACTPCMD appointed as SGEs receive compensation for performance of their duties on the Committee and reimbursement for per diem and travel expenses incurred for attending ACTPCMD meetings.

The following information must be included in the package of materials submitted in order for an individual's nomination to be considered: (1) A letter of nomination from an employer, colleague, or a professional organization; (2) a current copy of the nominee's curriculum vitae; (3) a statement of interest from the nominee; and (4) a one-paragraph biographical sketch of the nominee. Nomination packages may be submitted directly by the individual being nominated or by the person/organization nominating them.

HHS endeavors to ensure that the membership of the ACTPCMD is fair and balanced in terms of points of view represented as well as between the health professions and a broad representation of geographic areas, including balance among urban and rural members, gender, and minorities, including racial and ethnic minority groups, as well as individuals with disabilities. At least 75 percent of the members of the Committee are health professionals. Appointments shall be made without discrimination of age, race, color, national origin, sex, disability, or religion. Members are appointed based on their competence, interest, and knowledge of the mission of the profession involved.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required in order for HRSA ethics officials to determine whether there is a potential conflict of interest between the SGE's public duties as a member of ACTPCMD and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–04448 Filed 3–3–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: The Division of Independent Review Application Reviewer Recruitment Form Extension 0915–0295

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 5, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail at: HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Division of Independent Review Application Reviewer Recruitment Form OMB No. 0915–0295—Extension.

Abstract: HRSA is responsible for administering the review of eligible applications submitted for grants under HRSA competitive announcements. HRSA ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject matter experts knowledgeable in health and public health disciplines for which support is requested. Review findings are advisory to HRSA programs responsible for making award decisions.

This announcement is a request for continuation of a web-based data collection system, the Reviewer Recruitment Module (RRM), used to gather critical reviewer information. The RRM uses standardized categories of information in drop down menu format for data such as the following: degree, specialty, occupation, work setting, and in select instances affiliations with organizations and institutions that serve special populations. Some program regulations require that objective review panels contain consumers of health services. Other demographic data may be voluntarily provided by a potential reviewer. Defined data elements assist HRSA in finding and selecting expert reviewers for objective review committees.

HRSA maintains a roster of approximately 9,000 qualified individuals who have actively served on HRSA objective review committees. The web based RRM simplifies reviewer registration entry using a user-friendly Graphical User Interface with a few data drop down menu choices, a search engine that supports key word queries in the actual resume or Curriculum Vitae text and permits reviewers to access and update their information at will and as needed. The RRM is 508 compliant and accessible by the general public via a link on the HRSA ''Grants'' internet site, or by keying the RRM URL into their browser. The RRM is accessible using any of the commonly used internet browsers.

Need and Proposed Use of the Information: HRSA currently utilizes RRM to collect information from individuals who wish to volunteer as objective review committee participants for the Agency's discretionary and competitive grant or cooperative agreement funding opportunities. RRM provides HRSA with an effective search and communication functionality with which to identify and contact qualified potential reviewers. The RRM has an enhanced search and reporting capability to help ensure that the HRSA reviewer pool has the necessary skills, education, and diversity to meet the ever-evolving need for qualified reviewers. If HRSA identifies either an expertise or demographic that is under-represented in the RRM pool, HRSA is able to recruit specifically to address those needs. Expertise is always the primary determinant in selecting potential reviewers for any specific grant review; no reviewer is required to provide demographic information to join the reviewer pool or be selected as a reviewer for any competition.

Likely Respondents: All HRSA reviewers must possess the technical skill and ability to access the internet on a secure desktop laptop, or touch pad, and either a land line or Voice Over internet Protocol capability to participate in HRSA objective review committees. Reviewers are professionals with expertise and experience consistent with the HRSA mission and competitive program needs to address the availability and delivery of quality health care to all Americans. Certain legislation requires HRSA programs to include consumers of specific health care services in the objective review committee.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
New reviewer	2,000	1	2,000	.166	332
Updating reviewer information	9,000	1	9,000	.333	2,997
Total	11,000		11,000		3,329

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–04538 Filed 3–3–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: March 31, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kristina S. Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and

Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04482 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public as a virtual meeting. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Advisory Committee on Research on Women's Health.

Date: April 12, 2023.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: ORWH Director's Report; Presentation from the Director of the National Center for Advancing Translational Sciences (NCATS); Presentation on NIH Inclusion Data; Presentation on the FY2024–2028 NIH-wide Strategic Plan on Research on the Health of Women; Presentations on translational science.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samia Noursi, Ph.D., Associate Director, Science Policy, Planning, and Analysis, Office of Research on Women's Health, National Institutes of Health, 6707 Democracy Blvd., Room 402, Bethesda, MD 20892, 301–496–9472, *samia.noursi@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meetings. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://orwh.od.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04485 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Stakeholder Engagement Innovation Center for TYPE 2 Diabetes U2C.

Date: March 30, 2023.

Time: 9:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04479 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Stakeholder Engagement Innovation Center for TYPE 1 Diabetes U2C.

Date: March 30, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04478 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Reproductive, Perinatal and Pediatric Health Study Section (RPPH).

Date: March 13, 2023.

Time: 3:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cynthia Chioma McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081, *mcolivercc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04481 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Regular Clearance for the National Institute of Mental Health Data Archive (NDA), (NIMH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Andrew Hooper, National Institute of Mental Health (NIMH) Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480–8433, or email your request, including your mailing address, to *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: The National Institute of Mental Health Data Archive (NDA), NIMH, 0925–0667, expiration date 1/31/2024, REVISION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIMH Data Archive (NDA) is an infrastructure that allows for the submission and storage of human subjects' data from researchers conducting studies related to many scientific domains, regardless of the source of funding. The NIH and the NIMH seek to encourage use of the NDA by investigators in the field of multiple scientific research domains to achieve rapid scientific progress. In order to manage access to this data system, NIMH collects information from two categories of NDA users: (1) Investigators who seek permission to access data from the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Use Certification (DUC), and (2) investigators who request permission to submit data to the NDA for the purpose of scientific investigation, scholarship or teaching, or other forms of research and research development, via the Data Submission Agreement (DSA). This REVISION request is intended to facilitate NDA users' completion of the DUC and DSA by providing them with clearer guidance and updated background information.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,875.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of projects per respondent	Average time per tesponse (in hours)	Total burden hours
NDA Data Submission Agreement (DSA).	Researchers submitting data	300	1	90/60	450
NDA Data Use Certification (DUC) ...	Researchers requesting access to data.	950	1	90/60	1,425
Total	.....	.....	1,250	.....	1,875

Dated: March 1, 2023.

Andrew A. Hooper,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2023–04553 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–5: SBIR Contract Review.

Date: March 28, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240–620–0819, *susan.spence@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, SEP–8: NCI Clinical and Translational Cancer Research.

Date: March 29, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources Training and Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850, 240–276–6456, *tangd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04484 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle and Exercise Physiology.

Date: March 30, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: HIV/AIDS Biological Review Panel.

Date: April 5, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Diana Maria Ortiz-Garcia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–5614, *diana.ortiz-garcia@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Interspecies Microbial Interactions and Transmission of Vector-Borne and Zoonotic Diseases.

Date: April 7, 2023.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jui Pandhare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7735, *pandharej2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04480 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID New Innovators Awards (DP2 Clinical Trial Not Allowed).

Date: March 28–30, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, (301) 761–7106, *mohammed.aiyegbo@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04483 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; HEAL Initiative: Prevention and Management of Chronic Pain in Rural Populations (UG3/UH3, Clinical Trials Required).

Date: March 21, 2023.

Time: 09:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, *sushmita.purkayastha@nih.gov.*

Sonia Elena Nanescu, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *Sonia.nanescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 1, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04549 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of IDeA Clinical Research Resource Center (U24).

Date: April 7, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18D, Bethesda, Maryland 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 28, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04476 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of a Multigenotypic Aged Rat Colony.

Date: March 31, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis Hardell, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 555–1234, *kaitlyn.hardell@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 28, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04477 Filed 3–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0098]

Notice of Publication of Vessel Traffic Services National Standards for Operating COMDTINST 16630.3B

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the publication of the Vessel Traffic Services National Standards of Operating Commandant Instruction (COMDTINST) 16630.3B. This instruction replaces the Vessel Traffic Services National Standards of Operating Procedures COMDTINST M16630.3A. This instruction provides programmatic guidance to all Coast Guard Sectors and Vessel Traffic Services.

ADDRESSES: You can find a copy of the COMDTINST 16630.3B posted in the docket by searching docket number USCG–2023–0098 at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Darin Mathis, Coast Guard; telephone 202–372–1559, email *darin.e.mathis@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Discussion

The Coast Guard announces the publication and availability of the COMDTINST 16630.3B. This COMDTINST includes information on the use of communications, surveillance equipment and Captain of the Port or VTS specific regulatory authority. We have posted a copy of the COMDTINST 16630.3B in the docket where indicated under the **ADDRESSES** section.

Section 70001 of Title 46, United States Code, delegated to the Coast Guard in Department of Homeland Security Delegation No. 00170, Revision No. 01.3, requires the Coast Guard to establish a national policy which is inclusive of local variances and publish such policy in the **Federal Register**. This **Federal Register** notice is intended to meet this requirement.

This notice is issued under authority of 46 U.S.C. 70001.

Dated: February 28, 2023.

Michael D. Emerson,

Director, Marine Transportation System, U.S. Coast Guard.

[FR Doc. 2023–04468 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0097]

National Navigation Safety Advisory Committee Meeting; March 2023 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The National Navigation Safety Advisory Committee (Committee) will conduct a series of meetings over 2 days in Portsmouth, Virginia to discuss matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems. All meetings will be open to the public.

DATES:

Meetings: The Committee will hold meetings on Tuesday, March 28, and Wednesday, March 29, 2023, from 8 a.m. to 5:30 p.m. Eastern Daylight Time (EDT). Please note these meetings may adjourn early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meetings, submit your written comments no later than March 14, 2023.

ADDRESSES: The meetings will be held at the Renaissance Portsmouth-Norfolk Waterfront hotel located at 425 Water Street, Portsmouth, VA 23704, website: *https://www.marriott.com/en-us/hotels/orfpt-renaissance-portsmouth-norfolk-waterfront-hotel/overview/.* The meetings will also be held virtually. To join the virtual meetings, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m., EDT on March 24, 2023, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come first-served basis.

Pre-registration information: Pre-registration is required for attending virtual meetings. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

Attendees at the in-person meetings will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which may include the need to wear masks. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

The National Navigation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Lieutenant Ryan Burk at *Ryan.B.Burk@uscg.mil* or call (202) 372–1562 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than March 14, 2023. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2023–0097]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice available on the homepage of *https://www.regulations.gov.* For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Burk, Alternate Designated Federal Officer of the National Navigation Safety Advisory Committee, 2703 Martin Luther King Jr Ave, SE, Stop 7418, Washington, DC 20593–7418, telephone (202) 372–1562, or email *Ryan.B.Burk@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C., ch. 10). The National Navigation Safety Advisory Committee is authorized by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15107. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The Committee provides advice the Secretary of Homeland Security via the Commandant of the U. S. Coast Guard on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems.

Agenda

Day 1

The agenda for the March 28, 2023, meeting is as follows:

(1) Call to order.

(2) Introduction.

(3) Remarks by the Chairman and the Designated Federal Officer (DFO).

(4) Roll call of Committee members and determination of a quorum.

(5) Presentations on electronic charts and navigation equipment carriage requirements, and navigation safety in and around Offshore Renewable Energy Installations (OREI).

(6) Presentation of Tasks. Following the above presentations, the Committee Chairman and the DFO will form subcommittees to discuss the following task statements:

(a) Task Statement 21–01, Electronic Charts and Navigational Equipment Carriage Requirements.

(b) Task Statement 23–01: Review of NVIC 01–19 (CH 1) which incorporated recommendations provided by Committee Resolution 21–02—Navigation Safety in and around Offshore Renewable Energy Installations

(c) Task Statement 23–02: Defining the term ''prudent mariner'' referenced in the Rules of the Road, on nautical charts and in navigation publications.

(d) Task Statement 23–03: Recommendation to clarify the term ''crosses a navigational channel'' as used in Rules of the Road, Rule 27.

(7) Public comment period.

(8) Report by Subcommittees on accomplishments.

(9) Adjournment of meeting.

Day 2

The agenda for the March 29, 2023, meeting is as follows:

(1) Call to order.

(2) Introduction.

(3) Remarks by the Chairman and the DFO.

(4) Roll call of Committee members and determination of a quorum.

(5) Subcommittee discussions continued from Tuesday, March 28, 2023.

(6) Public comment period.

(7) Subcommittee reports presented to the Committee.

(8) Schedule next meeting date.

(9) Closing remarks by the Chairman and the DFO.

(10) Adjournment of meeting.

A copy of all meeting documentation will be available, by March 14, 2023, by going to the Coast Guard Homeport website, *https://homeport.uscg.mil,* selecting the Missions tab, and navigating to the Federal Advisory Committees section. Alternatively, you may contact Lieutenant Ryan Burk as noted in the **FOR FURTHER INFORMATION CONTACT** section.

A public comment period will be held during each Committee meeting concerning matters being discussed. Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may end before the period allotted following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: March 1, 2023.

Michael D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2023–04506 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2320]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and

where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2320, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Broadwater County, Montana and Incorporated Areas Project: 18–08–0001S Preliminary Date: October 14, 2022	
Unincorporated Areas of Broadwater County	Broadwater County Courthouse, 515 Broadway Street, Townsend, MT 59644.
Hamlin County, South Dakota and Incorporated Areas Project: 20–08–0002S Preliminary Date: November 11, 2022	
City of Castlewood	City Hall, 204 East Main Street, Castlewood, SD 57223.
City of Estelline	City Office, 117 North Main Street, Estelline, SD 57234.
City of Lake Norden	City Office, 508 Main Avenue, Lake Norden, SD 57248.
Unincorporated Areas of Hamlin County	Hamlin County Courthouse, 300 4th Street, Hayti, SD 57241.

[FR Doc. 2023–04527 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0007]

Notice of Intent To Prepare an Environmental Impact Statement for Oregon

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of intent to prepare an Environmental Impact Statement; notice of public meetings; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as the lead agency, announces its intent to prepare an Environmental Impact Statement (EIS) for the implementation of the plan for National Flood Insurance Program (NFIP)—Endangered Species Act (ESA) Integration in Oregon. FEMA released a draft of this plan in October 2021. Notice is hereby given that the public scoping process has begun for the preparation of an EIS for the proposed action. The purpose of the scoping process is to solicit public comments regarding the range of issues, information, and analyses relevant to the proposed action, including potential environmental impacts and reasonable alternatives to address in the EIS. This notice also notifies the public that FEMA intends to host in-person and virtual public scoping meetings, host a web-based scoping room to provide additional information to the public, and solicit comments on potential issues, concerns, and reasonable alternatives that FEMA should consider. FEMA is preparing this EIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the NEPA regulations implemented by the Council on Environmental Quality as of the date of this Notice.

DATES: Comments and related material must be received by FEMA on or before May 5, 2023. FEMA will hold at least two virtual public scoping meetings and at least two in-person public scoping meetings in Oregon at the times, dates, and locations listed on the project EIS website (see **ADDRESSES** section of this document). Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

ADDRESSES: The project EIS website with the draft plan and public meeting information is at *https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration.* You may provide oral or written comments at either the in-person or virtual public scoping meetings. You may also provide written comments via the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for FEMA–2023–0007 and follow the instructions for submitting comments.

All submissions must include the agency name and Docket ID for this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the ''Privacy and Security Notice'' link on the homepage of *www.regulations.gov.* Commenters are encouraged to identify the number of the specific question or questions to which they are responding. For access to the docket and to read comments received by FEMA, go to *https://www.regulations.gov* and search for Docket ID FEMA–2023–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Science Kilner, Regional Environmental Officer, FEMA Region 10, *FEMA-R10-ESAcomments@fema.dhs.gov,* 425–487–4713, or visit the EIS website (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: FEMA administers the National Flood Insurance Program (NFIP), a nationwide program that reduces future flood damage by requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance. The NFIP was established by the United States Congress in 1968 with the passage of the National Flood Insurance Act (NFIA). This law mandated that FEMA identify the nation's flood-prone areas and make insurance available to participating communities (local, tribal, and state governments) that implement floodplain management requirements that meet or exceed the minimum standards of the program. The NFIP is the primary source of flood insurance coverage for residential properties in the United States.

The NFIP also engages in many ''noninsurance'' activities to serve the public interest. These include identifying and mapping flood hazards, disseminating flood-risk information through flood maps, and setting minimum floodplain management standards for community participation. The NFIP contributes to community resilience by setting minimum standards and offering incentive programs such as the Community Rating System (CRS). Through the CRS, communities are credited for activities that exceed FEMA's minimum NFIP requirements and further reduce flood risk.

Participation in the NFIP is voluntary but necessary for communities to obtain access to NFIP flood insurance. This insurance is designed to protect against the risk of flood losses, thus reducing the escalating costs of repairing damage to buildings and their contents caused by floods. FEMA sets the minimum standards for participating communities through regulation for participants, although communities may adopt stricter standards. Participating communities are responsible for adoption and enforcement of the floodplain management standards. However, FEMA may place communities on probation or suspend them if they fail to adopt or enforce the minimum standards. (44 CFR 59.22(a–b)). If communities do not remedy the issue, they may be removed from the program. (44 CFR 59.22(c)).

As a Federal agency, FEMA must consider whether NFIP activities affect listed threatened or endangered species protected by the Endangered Species Act (ESA). Under Section 7 of the ESA, FEMA is required to consult with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (collectively ''the Services'') when any action the agency carries out, funds, or authorizes may affect a listed endangered or threatened species or adversely modify the designated critical habitat of such species. A lawsuit brought against FEMA in 2009 by Portland Audubon Society, et al., sought to highlight the agency's failure to consult with the Services on the implementation of the NFIP in Oregon. A settlement agreement was reached in 2010, and FEMA initiated informal consultation with NMFS soon after. In July 2011, FEMA initiated formal consultation with the submittal of a Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.

As a condition of the settlement agreement, FEMA consulted on NFIP minimum floodplain management criteria within Oregon, mapping activities, and implementation of the CRS, and implemented changes to the Conditional Letter of Map Change (CLOMC) application process. In July 2011, FEMA initiated formal consultation with the submittal of a

Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.

On April 4, 2016, NMFS completed its analysis of the effects of the NFIP on species listed as threatened or endangered under the ESA and issued a Biological Opinion (BiOp) titled, ''Endangered Species Act (ESA) Section 7(a)(2) Jeopardy and Destruction or Adverse Modification of Critical Habitat Biological Opinion and Section 7(a)(2) 'Not Likely to Adversely Affect' Determination for the Implementation of the National Flood Insurance Program in the State of Oregon. NMFS Consultation Number NWR–2011–3197.''

Proposed Action Area

The proposed action area includes any part of Oregon within the six NOAA Salmon and Steelhead Recovery Domains that is in a current or future mapped special flood hazard area (SFHA) in a community that is participating or may participate in the NFIP.

Oregon and any counties, incorporated municipalities, and tribal governments within the proposed action area will potentially be affected by the proposed action. All Oregon counties are within the boundaries of the proposed action area, with the exception of Baker, Harney, Klamath, Lake and Malheur Counties.

The proposed action area is defined by the boundaries of six NOAA Salmon and Steelhead Recovery Domains within Oregon: Oregon Coast, Southern Oregon/Northern California Coast, Willamette River, Lower Columbia River, Middle Columbia River, and Snake River. NOAA has mapped these Recovery Domains at *https://www.webapps.nwfsc.noaa.gov/portal/home/webmap/viewer.html.*

Within these recovery domains, the proposed action applies to communities that are participating in the NFIP. However, since participation is voluntary and a community may join or leave the program, this EIS applies to both current and future NFIP communities. Information about the NFIP in Oregon is available through the Oregon Department of Land Conservation and Development at *https://www.oregon.gov/lcd/NH/Pages/NFIP.aspx.*

For a proposed development activity to be subject to the new requirements, it must be proposed in a location subject to the minimum standards of the NFIP, which means that, at the time the activity is proposed, it is (1) within the geographic jurisdiction of a community that participates in the NFIP, and (2) it is within the mapped special flood hazard area (SFHA). To determine if a property is in the current effective SFHA, access the FEMA Flood Map Service Center at *https://msc.fema.gov/portal/home.*

The proposed action, best available data on flood risk, and climate change may add to or alter the mapped special flood hazard areas (SFHA) and require local land regulations adopt additional performance standards to protect threatened or endangered species. Therefore, any development activity within the proposed action area may be subject to new requirements resulting from the proposed action.

Purpose and Need for the Proposed Action

In the BiOp, NMFS concluded that the current implementation of the NFIP in Oregon is likely to jeopardize the continued existence of 16 anadromous fish species and the Southern Resident Killer Whale, all of which are listed as threatened or endangered under the ESA, and result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species. NMFS's conclusion establishes the need for the proposed action.

Federal regulation, at 50 CFR 402.14(h), requires NMFS to include Reasonable and Prudent Alternatives (RPA) in a jeopardy BiOp. NMFS proposed alternative approaches to NFIP performance standards that, according to NMFS, when implemented would avoid continued jeopardy for the listed species and habitat described in the BiOp. Based on the BiOp and NMFS's recommendations in the RPA, and pursuant to Section 7(a)(2) of the ESA, FEMA must make several changes to how the NFIP is implemented in parts of Oregon.

Therefore, the purpose of the proposed action is to implement changes to the administration of the NFIP that align closely to the recommendations in NMFS's BiOp in the proposed action area. The recommended changes are designed to avoid jeopardy to the ESA-listed species and critical habitats described in the BiOp, while also maintaining consistency with FEMA's existing NFIP statutory and regulatory authorities and the program's objectives. Proposed changes must be practicable and implementable by the NFIP-participating communities.

The proposed changes recommended in the BiOp include: (1) information changes provided by FEMA to Oregon NFIP-participating communities, (2) changes to mapping products, and (3) reporting requirements for these communities. FEMA must also ensure that NFIP-participating communities within the proposed action area adopt measures needed to avoid continued jeopardy and/or adverse habitat modification and collectively meet a standard of ''no net loss'' for three key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp.

The Oregon NFIP BiOp and its RPA do not directly require any action of state, local, or tribal governments participating in the NFIP because the consultation on NFIP impacts to ESA-listed species occurred between FEMA and NMFS. FEMA does not have authority in local land use decisions or to regulate floodplain development. However, for communities to participate in the NFIP, they must adopt the minimum performance standards for the program in their local land use regulations. The ultimate authority to regulate development—including the provision and approval of permits, inspection of property, and citing violations—is granted to communities by the states. State and local governments, through their planning, zoning, and building code enabling authorities, make the determination of how a property must be developed.

Proposed Action and Alternatives

As a result of the RPAs, FEMA must implement the NFIP such that its influence over the individual floodplain development actions permitted by local and tribal governments participating in the program does not jeopardize ESA-listed species and their critical habitat. FEMA determined the best approach to meeting the intent of the RPA was to develop an Implementation Plan outlining the actions the agency will take to ensure its implementation of the NFIP in Oregon is compliant with the ESA going forward.

The proposed action that FEMA will evaluate in the EIS is the execution of the Oregon Implementation Plan for NFIP–ESA Integration. A copy of the draft plan is available on the project EIS website (see the **ADDRESSES** section of this document). The draft plan comprises changes to information provided to communities, mapping products, and reporting requirements for NFIP-participating communities; as well as a range of potential measures communities will need to select from to collectively meet a ''no net loss'' standard of key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp.

In 2016–2017, FEMA asked the Oregon Department of Land Conservation and Development (DLCD) to help identify any potential challenges with the NMFS approach to implementation outlined in the BiOp (the ''reasonable and prudent alternative''). DLCD convened a set of stakeholder work groups to help identify barriers and to propose alternative approaches. In 2020–2021, the Oregon NFIP Implementation Planning Group, informed by the DLCD stakeholder work groups, held a series of workshops that culminated with the draft Implementation Plan that FEMA is now analyzing under NEPA. The proposed action is the outcome of this multi-year process.

In the EIS, FEMA will analyze a No-Action Alternative, under which FEMA will not implement any changes to the NFIP in Oregon. This alternative, required by the NEPA Implementing Regulations, would not fulfill the purpose and need.

The draft Implementation Plan identifies four paths that communities can take: model ordinance, ordinance checklist, approved community compliance plan, and ESA Section 10 Habitat Conservation Plan or ESA Section 4(d) Limit 12. These paths are not NEPA alternatives. All four constitute FEMA's preferred alternative, as described in the draft Implementation Plan. A community may choose a single path for their entire jurisdiction or different paths in different parts of the jurisdiction. As each path leads to the same performance standard—no net loss of three key natural floodplain functions—each path will constrain development in the floodplain and require appropriate mitigation for loss of natural floodplain function. Therefore, the impacts to resources analyzed in this EIS will not likely depend on the specific path.

The RPA and 2021 draft Implementation Plan identified some elements for future FEMA decision. This EIS will discuss the options for these elements; the final EIS will consolidate those elements into the final preferred alternative. These implementation options are not NEPA alternatives by themselves because they cannot stand alone and fulfill the purpose and need.

FEMA will also analyze other reasonable alternatives to the proposed action identified during the scoping period. Reasonable alternatives must fulfil the purpose and need and may include additional or alternative avoidance, minimization, and mitigation measures that achieve the no-net loss of floodplain function performance standard.

Summary of Expected Impacts

The proposed action is to ensure that NFIP-participating communities within the BiOp Action Area adopt measures to collectively meet a standard of ''no net loss'' for key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp. These functions, as defined in the 2021 draft Implementation Plan, are: flood storage, water quality, and riparian vegetation.

In accordance with 40 CFR 1508.1(g), the draft EIS will identify the effects of the proposed action and the alternatives. The regulations define effects to include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health. Effects may be direct, indirect, or cumulative. Effects may also be beneficial or detrimental. As discussed in the Comments section below, submission of public comments, research, studies, and data on these impacts are crucial to FEMA's development of a comprehensive draft EIS.

Based on the Oregon NFIP BiOp, the DLCD stakeholder work groups, and the Oregon NIFIP Implementation Planning Group process, FEMA initially expects the proposed action to benefit natural floodplain functions, threatened and endangered species habitat, and essential fish habitat. FEMA also initially expects the proposed action to potentially significantly impact communities, individuals, and businesses that intend on developing in the floodplain. FEMA anticipates that there may be adverse indirect impacts to community land use planning, economics, social structures, development plans, minority, low-income populations, Tribes, infrastructure, agriculture, aquaculture, energy production and transmission, and transportation.

At the end of the NEPA process, FEMA will issue a Record of Decision (ROD) identifying the environmentally preferable alternative (40 CFR 1505.2). FEMA will discuss preferences among alternatives based on economic, technical, and biological factors, and its statutory mission. FEMA will also explain how it considered these and other factors in making a final decision.

Anticipated Permits and Other Authorizations

For communities to participate in the NFIP, they must adopt the minimum performance standards into their local land use regulations. Therefore, FEMA can implement the proposed Implementation Plan, make changes in mapping products, reporting requirements, and minimum standards without permits or other authorizations.

However, communities will have to individually decide whether to (1) participate in or withdraw from the NFIP, and (2) if they choose to participate, determine which path(s) they will take to ensure that their individual floodplain development actions as influenced by the NFIP do not further jeopardize ESA-listed species and their designated critical habitats. FEMA cannot require a community to pursue a particular pathway for ESA compliance.

Pursuant to 44 CFR 60.3(a)(2), a community must obtain and maintain documentation of compliance with the appropriate Federal or state laws. Therefore, each individual project proponent (homeowner or other developer) is responsible for securing applicable local, state, and Federal permits.

Schedule for the Decision-Making Process

After the scoping period, FEMA will prepare a draft EIS and file it with the Environmental Protection Agency (EPA). EPA will publish a notice of availability (NOA) and announce a minimum 45-day public comment period. After the public comment period ends, FEMA will review and respond to the comments received and develop the final EIS. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

FEMA currently expects to make the draft EIS available to the public in late 2023. In accordance with 40 CFR 1501.10, FEMA anticipates that the agency will publish both the draft and final EIS and sign the ROD within two years from the issuance of this notice.

Public Scoping Process, Including Scoping Meetings

This NEPA scoping process is in addition to previous opportunities available to the public to understand and influence FEMA's draft Implementation Plan.

The purpose of the EIS scoping process is to gather input on the issues, concerns, possible alternatives, and potential significant impacts to the quality of the human environment that FEMA should consider in the EIS. Participants are anticipated to include, and are not limited to, agencies (Federal, state, county, and local),

Tribes, public interest groups, nongovernmental organizations, businesses, trade associations, and individual members of the public.

As described under the **DATES** section of this notice, FEMA is facilitating virtual and in-person meetings as well as a virtual scoping room to accommodate and encourage public participation. At these meetings, the public will have the opportunity to present comments on the scope of the EIS. FEMA representatives will be available to answer questions and provide additional information to meeting attendees. In addition to providing comments at the public scoping meetings, stakeholders may submit written comments as described in the **ADDRESSES** section. Comments may be broad in nature or restricted to specific areas of concern, but they should be directly relevant to the NEPA process or potential environmental impacts as described in the Comments section below.

Comments

FEMA is seeking input on relevant information, studies, or analyses of any kind concerning impacts that result from the proposed action or alternatives. Specifically:

1. Potential effects (adverse or beneficial) that the proposed action could have on biological resources, including species and their habitat.
2. Potential effects that the proposed action could have on physical resources and natural floodplain functions.
3. Potential effects that the proposed action could have on socioeconomics, including demographics, employment, economics, minority, low-income populations, and Tribes, land use, zoning, housing, commerce, transportation, community growth, and community infrastructure.
4. Other possible reasonable alternatives to the proposed action that FEMA should consider, including additional or alternative avoidance, minimization, and mitigation measures that achieve the performance standard of no-net loss of three key natural floodplain functions.

FEMA regulation, at 40 CFR 1502.17, requires that FEMA append to the draft EIS or otherwise publish all comments received during the scoping process that identifies alternatives, information, and analysis for FEMA's consideration. FEMA respects each commentor's desire to withhold sensitive information (such as the costs associated with development in the floodplain) but, at the same time, recognizes that one set of impacts that may be associated with the implementation of the draft plan is the economic, social, and equity burden that individuals, businesses, and communities may face.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform FEMA of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and possible alternatives to the proposed action as well as to economic, employment, and other impacts affecting the quality of the human environment.

Authority: 42 U.S.C. 4321, *et seq.,* and 40 CFR 1501.9.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04495 Filed 3–3–23; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2317]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2317, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Pender County, North Carolina and Incorporated Areas Project: 11–04–6510S Preliminary Dates: November 30, 2018 and July 30, 2021	
Town of Surf City	Surf City Municipal Complex, 214 West Florence Way, Hampstead, NC 28443.
Town of Topsail Beach	Building Inspection Department, 820 South Anderson Boulevard, Topsail Beach, NC 28445.
Unincorporated Areas of Pender County	Pender County Planning Department, 805 South Walker Street, Burgaw, NC 28425.

[FR Doc. 2023–04528 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2319]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2319, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and

other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Bullock County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Union Springs	City Hall, 212 Prairie Street North, Union Springs, AL 36089.
Unincorporated Areas of Bullock County	Bullock County Revenue Commissioner's Office, 217 North Prairie Street, #102, Union Springs, AL 36089.
Elmore County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Tallassee	City Hall, 3 Freeman Avenue, Tallassee, AL 36078.
City of Wetumpka	City Hall, 408 South Main Street, Wetumpka, AL 36092.
Unincorporated Areas of Elmore County	Elmore County Highway Department, 155 County Shop Road, Wetumpka, AL 36092.
Lee County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Auburn	Planning and Development, 171 North Ross Street, Auburn, AL 36830.
City of Opelika	Planning Department, 700 Fox Trail, Opelika, AL 36801.
Town of Notasulga	Town Hall, 76 West Main Street, Notasulga, AL 36866.
Unincorporated Areas of Lee County	Lee County Building Inspection, 100 Orr Avenue, Opelika, AL 36801.
Macon County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Tuskegee	Municipal Complex, 101 Fonville Street, Tuskegee, AL 36083.
Town of Franklin	Franklin Police Department, 1660 Alabama Highway 49, Tuskegee, AL 36083.
Town of Notasulga	Town Hall, 76 West Main Street, Notasulga, AL 36866.
Town of Shorter	Town Hall, 2427 Old Federal Road, Shorter, AL 36075.
Unincorporated Areas of Macon County	Macon County Courthouse, 101 East Rosa Parks Avenue, Tuskegee, AL 36083.
Montgomery County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Montgomery	City Hall, 103 North Perry Street, Montgomery, AL 36104.
Town of Pike Road	Town Hall, 9575 Vaughn Road, Pike Road, AL 36064.
Unincorporated Areas of Montgomery County	Montgomery County Courthouse Annex, 100 South Lawrence Street, Montgomery, AL 36104.
Russell County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Date: February 2, 2022	
Unincorporated Areas of Russell County	Russell County Highway Department, 97 Poorhouse Road, Seale, AL 36875.
Tallapoosa County, Alabama and Incorporated Areas Project: 18–04–0030S Preliminary Dates: February 2, 2022 and July 12, 2022	
City of Tallassee	City Hall, 3 Freeman Avenue, Tallassee, AL 36078.
Unincorporated Areas of Tallapoosa County	Tallapoosa County Courthouse, 125 North Broadnax Street, Dadeville, AL 36853.

[FR Doc. 2023–04523 Filed 3–3–23; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2318]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2318, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Fairfield County, Ohio and Incorporated Areas Project: 14–05–4454S Preliminary Date: September 30, 2022	
City of Pickerington	City Hall, 100 Lockville Road, Pickerington, OH 43147.
Unincorporated Areas of Fairfield County	Fairfield County GIS Department, 108 North High Street, Lancaster, OH 43130.
Kewaunee County, Wisconsin and Incorporated Areas Project: 14–05–3363S Preliminary Date: January 13, 2022 and October 27, 2022	
City of Algoma	City Hall, 416 Fremont Street, Algoma, WI 54201.
City of Kewaunee	City Hall, 401 5th Street, Kewaunee, WI 54216.

Community	Community map repository address
Unincorporated Areas of Kewaunee County	Kewaunee County Emergency Management Department, 625 3rd Street, Luxemburg, WI 54217.
Village of Casco	Village Hall, 211 1st Street, Casco, WI 54205.
Village of Luxemburg	Village Office, 206 Maple Street, Luxemburg, WI 54217.
Milwaukee County, Wisconsin (All Jurisdictions) Project: 13–05–3721S Preliminary Date: June 30, 2022	
City of Cudahy	City Hall, 5050 South Lake Drive, Cudahy, WI 53110.
City of Franklin	City Hall, 9229 West Loomis Road, Franklin, WI 53132.
City of Glendale	City Hall, 5909 North Milwaukee River Parkway, Glendale, WI 53209.
City of Greenfield	City Hall, 7325 West Forest Home Avenue, Greenfield, WI 53220.
City of Milwaukee	City Hall, 200 East Wells Street, Milwaukee, WI 53202.
City of Oak Creek	City Hall, 8040 South 6th Street, Oak Creek, WI 53154.
City of South Milwaukee	City Hall, 2424 15th Avenue, South Milwaukee, WI 53172.
City of St. Francis	City Hall, 3400 East Howard Avenue, St. Francis, WI 53235.
City of Wauwatosa	City Hall, 7725 West North Avenue, Wauwatosa, WI 53213.
City of West Allis	City Hall, 7525 West Greenfield Avenue, West Allis, WI 53214.
Village of Bayside	Village Hall, 9075 North Regent Road, Bayside, WI 53217.
Village of Brown Deer	Village Hall, 4800 West Green Brook Drive, Brown Deer, WI 53223.
Village of Fox Point	Village Hall, 7200 North Santa Monica Boulevard, Fox Point, WI 53217.
Village of Greendale	Village Hall, 6500 Northway Street, Greendale, WI 53129.
Village of Hales Corners	Village Hall, 5635 South New Berlin Road, Hales Corners, WI 53130.
Village of River Hills	Village Hall, 7650 North Pheasant Lane, River Hills, WI 53217.
Village of Shorewood	Village Hall, 3930 North Murray Avenue, Shorewood, WI 53211.
Village of Whitefish Bay	Village Hall, 5300 North Marlborough Drive, Whitefish Bay, WI 53217.

[FR Doc. 2023–04526 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Information Collection Request to Office of Management and Budget

AGENCY: Science and Technology Directorate (S&T), Department of Homeland Security (DHS).

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) intends to submit an Information Collection Requestion (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the collection of information. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, S&T is inviting comments as described below.

DATES: Comments much reach S&T on or before May 5, 2023.

ADDRESSES: You may submit comments identified by DHS docket number DHS–2022–0014 to S&T using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: *DHS/S&T/OES/CIO/Business Management Office:* Heather Erhuanga, *Heather.Erhuanga@hq.dhs.gov* or 202–941–8731 (Not a toll-free number.)

SUPPLEMENTARY INFORMATION: Public participation and request for comments: This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a S&T collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

S&T invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, S&T would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.

In response to your comments, we may revise this ICR. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, DHS–2022–0014, and must be received by May 5, 2023.

Submitting Comments: We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this

document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Overview of This Information Collection Request

Title: Science and Technology Collection of Qualitative Feedback.

OMB Control Number: 1640–0018.

Type of Information Collection: Extension without change of a currently approved collection Agency form number, if any, and the applicable component of the DHS sponsoring the collection: [INSERT FORM NUMBER], Science and Technology Directorate, Department of Homeland Security.

Respondents: Individuals.

Total Estimated Number of Respondents: An estimated 400,000 respondents will take the survey.

Total Estimated Burden Time: 200,000 hours.

Frequency: Once.

Obligation to Respond: Voluntary.

Summary: S&T's mission is to deliver effective and innovative insight, methods, and solutions for the critical needs of the Homeland Security Enterprise. As the research and development (R&D) arm of the Department of Homeland Security (DHS), the Science and Technology Directorate (S&T) focuses on providing the tools, technologies, and knowledge products the nation's Homeland Security Enterprise needs today and tomorrow. S&T constantly works to bridge industry and end-user communities around the nation. S&T's R&D focus areas cover DHS's core mission areas and use our network of industry, national laboratory and other partners seek solutions for capability gaps and define topics for future research. In order to work continuously to ensure that our programs are effective and meet our customers' needs, S&T seeks to obtain Office of Management and Budget approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This collection of information is necessary to enable the S&T programs to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving tools, technologies, services and knowledge products. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with our programs. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with products or service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between S&T and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector.

There is no cost to participants other than their time.

J. Jeffrey Robinson,

Deputy Chief Information Officer, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. 2023–04459 Filed 3–3–23; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–NWRS–2023–N011; FF07RYKD00–223–FXRS12610700000; OMB Control Number 1018–0173]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; In-Season Subsistence Salmon Fishery Catch and Effort Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before April 5, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0173'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On June 22, 2022, we published in the **Federal Register** (87 FR 37355) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 22, 2022. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–R7–NWRS–2022–0078) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received one comment in response to that notice which did not address the information collection requirements. No response to that comment is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our

information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The administration and uses of national wildlife refuges and wetland management districts are governed by the National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997; the Refuge Recreation Act of 1962 (Recreation Act; 16 U.S.C. 460k–460k–4); and the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3101 *et seq.*). ANILCA provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska.

Renewal of OMB's approval authorizes the Yukon Delta National Wildlife Refuge (YDNWR) to participate in the design and implementation of subsistence fisher surveys operated by the Orutsararmiut Traditional Native Council and the Kuskokwim River Inter-Tribal Fisheries Commission (KRITFC). Participation in the surveys informs in-season fisheries management decision-making in the Kuskokwim River subsistence salmon fishery.

The information collected by the survey includes the times individuals left and returned from boat launches, several characteristics of their fishing gear, broad classification of where the fishing activity occurred, for how long they actively fished, and how many of each of three salmon species they harvested. When coupled with aerial boat counts performed by the YDNWR, these data can be used to obtain quantitative estimates of total fishing activity and salmon harvest occurring from short-duration subsistence harvest opportunities. The estimates are then used to inform the management strategy used jointly by the YDNWR and the KRITFC.

Title of Collection: In-Season Subsistence Salmon Fishery Catch and Effort Survey.

OMB Control Number: 1018–0173.

Form Number: None.

Type of Review: Renewal without change of an existing information collection.

Respondents/Affected Public: Subsistence fishers within the Yukon Delta National Wildlife Refuge.

Total Estimated Number of Annual Respondents: 1,014.

Total Estimated Number of Annual Responses: 1,014.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 85 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–04509 Filed 3–3–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2022–N063; FXES11130500000–201–FF05E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of Two Northeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year reviews under the Endangered Species Act, as amended, for two northeastern species. A 5-year review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the previous 5-year review for each species.

DATES: To ensure consideration, please submit your written information by April 5, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how and where to submit information, see Request for New Information and Table 2—Contacts under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

General Information: Martin Miller, by telephone at 413–253–8615, via email at *martin_miller@fws.gov,* or via U.S. mail at U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Species-Specific Information and Submission of Comments: Contact the appropriate person or office listed in Table 2—Contacts in **SUPPLEMENTARY INFORMATION**.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year reviews under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for two northeastern species: the endangered Virginia big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii virginianus*) and Furbish's lousewort (*Pedicularis furbishiae*).

A 5-year review is based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the most recent status review for each species.

Why Do we conduct 5-year reviews and species status assessments?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (for wildlife) and 50 CFR 17.12(h) (for plants). Listed wildlife and plants can also be found at *https://ecos.fws.gov/tess_public/pub/listedAnimals.jsp* and *https://ecos.fws.gov/tess_public/pub/listedPlants.jsp,* respectively. Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every five years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species under active review. For additional information about 5-year reviews, refer to our fact sheet at *https://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What species are under review?

We are initiating 5-year status reviews of the species in table 1.

TABLE 1—SPECIES UNDER REVIEW

Common name	Scientific name	Status	Where listed	Listing date and citation
Virginia big-eared bat.	*Corynorhinus* (=*Plecotus*) *townsendii virginianus.*	Endangered	Wherever found	11/30/1979, 44 FR 69206 69208.
Furbish's lousewort	*Pedicularis furbishiae*	Endangered	Wherever found	04/26/1978, 43 FR 17910 17916.

What information do we consider in our 5-year reviews and species status assessments?

A 5-year review considers all new information available at the time of the review. In conducting the review, we consider the best scientific and commercial data that have become available since the most recent status review. We are seeking new information specifically regarding:

(1) Species biology, including but not limited to life-history and habitat requirements and impact tolerance thresholds;

(2) Historical and current population conditions, including but not limited to population abundance, trends, distribution, demographics, and genetics;

(3) Historical and current habitat conditions, including but not limited to amount, distribution, and suitability;

(4) Historical and current threats, threat trends, and threat projections in relation to the five listing factors (as defined in section 4(a)(1) of the ESA);

(5) Conservation measures for the species that have been implemented or are planned; and

(6) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information received will be considered during the 5-year review and will also be useful in evaluating ongoing recovery programs for the species.

Request for New Information

To ensure that 5-year reviews are based on the best available scientific and commercial information, we request new information from all sources. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

Please submit your questions, comments, and materials to the appropriate contact in table 2, below.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your submission, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can request that personal information be withheld from public review, we cannot guarantee that we will be able to do so.

Contacts

New information on the species covered in this notice should be submitted by mail or electronic mail to the appropriate contact shown in table 2, by the deadline provided above in **DATES**.

TABLE 2—CONTACTS

Species	Contact person, email	Contact address
Virginia big-eared bat	Liz Stout, *elizabeth_stout@fws.gov*	U.S. Fish and Wildlife Service, West Virginia Field Office, 6263 Appalachian Highway, Davis, WV 26260.
Furbish's lousewort	Hannah Mullally, *hannah_mullally@fws.gov*	U.S. Fish and Wildlife Service, Maine Field Office, 306 Hatchery Road, East Orland, ME 04431.

Authority

We publish this document under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Kyla Hastie,

Acting Regional Director, Northeast Region.

[FR Doc. 2023–04349 Filed 3–3–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–35244; PPNECACOS0, PPMPSD1Z.YM0000]

Request for Nominations for the Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Cape Cod National Seashore Advisory Commission (Commission).

DATES: Written nominations must be postmarked by April 5, 2023.

ADDRESSES: Nominations should be sent to Leslie Reynolds, Acting Superintendent, Cape Cod National Seashore, 99 Marconi Road, Wellfleet, Massachusetts 02667, or via email to *CACO_Superintendent@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Reynolds, via telephone (508) 957–0700. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Cape Cod National Seashore was established June 1, 1966, in accordance with 16 U.S.C. 459b–2 *et seq.* Section 459b–7 established the Commission to consult with the Secretary of the Interior, or the Secretary's designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission is composed of 10 members appointed by the Secretary of the Interior for 2-year terms, as follows: (a) six members from recommendations made by the boards of selectmen of the towns of Chatham, Eastham, Orleans, Provincetown, Truro and Wellfleet, in the Commonwealth of Massachusetts, one member from the recommendations made by each such board; (b) one member from recommendations of the county commissioners of Barnstable County, Commonwealth of Massachusetts; (c) two members from recommendations of the Governor of the Commonwealth of Massachusetts; and (d) one member appointed at the discretion of the Secretary.

We are currently requesting nominations for the one member appointed at the discretion of the Secretary.

The individual selected to serve at the discretion of the Secretary will be appointed as a special Government Employees (SGE). Individuals selected from the other categories will be appointed as representative members. Please be aware that members selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: SGEs and Financial Disclosure Reporting | U.S. Department of the Interior (*doi.gov*). Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Commission and permit the Department to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership must follow the nomination process. Members may not appoint alternates.

Members of the Commission serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of Title 5 of the United States Code.

Authority: 5 U.S.C. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–04539 Filed 3–3–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Proposed Consent Decrees Under the Toxic Substances Control Act

On February 28, 2023, the Department of Justice lodged two proposed Consent Decrees (the ''Consent Decrees'') with the District Court of the Southern District of New York in a lawsuit entitled *United States of America* v. *CISNE NY Construction, Inc., et al.,* Civil Action No. 22–338.

In this action, the United States seeks, as provided under Toxic Substances Control Act (''TSCA''), injunctive relief from Edison Ruilova and Jose Paccha, among others, in connection with the defendants' unlawful work practices during renovations governed by an implementing regulation of the TSCA—the Renovation, Repair, and Painting Rule, 40 CFR part 745. The proposed settlements resolve the United States' claims, require Edison Ruilova and Jose Paccha to pay $25,000 each, and impose injunctive relief.

The publication of this notice opens the public comment on the proposed settlements. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *CISNE NY Construction, Inc.,* DJ # 90–5–2–1–12386. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the settlements may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the settlements upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $24.00 (25 cents per page

reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–04462 Filed 3–3–23; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 23–013]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in the **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than March 21, 2023 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than March 21, 2023 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Trenton Roche, 202–358–0646, *trenton.roche@nasa.gov.*

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in: U.S. Patent No. 10,269,463 B2 for an invention titled ''Nuclear Thermionic Avalanche Cells with Thermoelectric (NTAC–TE) Generator in Tandem Mode,'' U.S. Patent No. 10,886,452 B2 for an invention titled ''Selective and Direct Deposition Technique for Streamlined CMOS Processing,'' U.S. Patent No. 11,094,425 B2 for an invention titled ''Portable Compact Thermionic Power Cell,'' U.S. Patent No. 11,063,198 for an invention titled ''Metallic Junction Thermoelectric Generator,'' U.S. Patent Application No. 17/140,548 for an invention titled ''Selective and Direct Deposition Technique for Streamlined CMOS Processing,'' U.S. Patent No. 11,004,666 B2 for an invention titled ''Portable Miniaturized Thermionic Power Cell with Multiple Regenerative Layers,'' U.S. Patent No. 10,985,676 B2 for an invention titled ''High Performance Electric Generators Boosted by Nuclear Electron Avalanche (NEA),'' U.S. Patent No. 11,037,687 B2 for an invention titled ''Co-60 Breeding Reactor Tandem with Thermionic Avalanche Cell,'' U.S. Patent No. 11,257,604 B2 for an invention titled ''Multilayer Radio Isotope for Enhanced Photoelectron Avalanche Process,'' U.S. Patent Application No. 17/564,911 for an invention titled ''NTAC Augmented Nuclear Electric Propulsion and/or Nuclear Thermal Propulsion Systems,'' to Mobile Defense, LLC having its principal place of business in 89 Sandy Bay Drive, Poquoson, VA 23662. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Trenton J. Roche,

Agency Counsel for Intellectual Property.

[FR Doc. 2023–04486 Filed 3–3–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 5, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program.

OMB Number: 3145–0233.

Expiration Date of Approval: June 30, 2023.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project

The Emerging Frontiers in Research and Innovation (EFRI) program recommends, prioritizes, and funds interdisciplinary initiatives at the emerging frontier of engineering research and education. These investments represent transformative opportunities, potentially leading to: new research areas for NSF, ENG, and other agencies; new industries or capabilities that result in a leadership position for the country; and/or significant progress on a recognized national need or grand challenge.

Established in 2007, EFRI supports cutting-edge research that is difficult to fund through other NSF programs, such as single-investigator grants or large research centers. EFRI seeks high-risk opportunities with the potential for a large payoff where researchers are encouraged to stretch beyond their ongoing activities. Based on input from workshops, advisory committees, technical meetings, professional societies, research proposals, and suggestions from the research community, the EFRI program identifies those emerging opportunities and manages a formal process for funding their research. The emerging ideas tackled by EFRI are ''frontier'' because they not only push the understood limits of engineering but actually overlap multiple fields. The EFRI funding process inspires investigators with different expertise to work together on one emerging concept.

EFRI awards require multi-disciplinary teams of at least one Principal Investigator and two Co-Principal Investigators. The anticipated duration of all awards is 4-years. With respect to the anticipated funding level, each project team may receive support of up to a total of $2,000,000 spread over four years, pending the availability of funds. In this respect, EFRI awards are above the average single-investigator award amounts.

EFRI-funded projects could include research opportunities and mentoring for educators, scholars, and university students, as well as outreach programs that help stir the imagination of K–12 students, often with a focus on groups underrepresented in science and engineering.

We are seeking to collect additional information from the grantees about the outcomes of their research that goes above and beyond the standard reporting requirements used by the NSF and spans over a period of 5 years after the award. This data collection effort will enable program officers to longitudinally monitor outputs and outcomes given the unique goals and purpose of the program. This is very important to enable appropriate and accurate evidence-based management of the program and to determine whether or not the specific goals of the program are being met.

Grantees will be requested to submit this information on an annual basis to support performance review and the management of EFRI grants by EFRI officers. EFRI grantees will be requested to submit these indicators to NSF via a data collection website that will be embedded in NSF's IT infrastructure. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; sources of complementary funding and in-kind support to the EFRI project; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; descriptions of significant advances and other outcomes of the EFRI effort.

Each submission will address the following major categories of activities: (1) knowledge transfer across disciplines, (2) innovation of ideas in areas of great opportunity, (3) potential for translational research, (4) project results that advance the frontier/creation of new fields of study, (5) introduction to the classroom of innovative research methods or discoveries, (6) fostering participation of underrepresented groups in science, and (7) impacting student career trajectory. For each of the categories, the report will enumerate specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, and performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued EFRI program maintenance and growth.

Estimate of Burden: Approximately 7 hours per grant for approximately 100 grants per year for a total of 700 hours per year.

Respondents: Principal Investigators who lead the EFRI grants, and co-Principal Investigators and trainees involved in EFRI-funded research.

Estimated Number of Responses per Report: One report collected for each of the approximately 100 grantees every year, including sub-reports from co-PIs and trainee researchers.

Dated: March 1, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–04537 Filed 3–3–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Qualitative Feedback on Agency Service Delivery

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 5, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3145–0215.

Expiration Date of Approval: August 31, 2023.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The proposed information collection activity provides a means for the National Science Foundation (NSF) to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Agency's commitment to improving service delivery.

By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness,

appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

NSF will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of NSF (if released, NSF must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collection will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding this study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Below we provide the National Science Foundation's projected average estimates for the next three years:

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 50.

Respondents: 500 per activity.

Annual responses: 30,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 25,000.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 1, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–04540 Filed 3–3–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0036]

NRC Bulletin 2012–01: Design Vulnerability in Electric Power System

AGENCY: Nuclear Regulatory Commission.

ACTION: Bulletin; closure.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this notice to inform all holders of operating licenses and combined licenses for nuclear power reactors of the closure of ''NRC Bulletin 2012–01: Design Vulnerability in Electric Power System'' (Bulletin). NRC has completed evaluations and inspections of the responses and other actions taken by the licensees of the nuclear power plants in response to NRC Bulletin 2012–01. The staff has approved the actions to be taken by the licensee for Vogtle Units 3 and 4 following commencement of operations and will inspect these actions under the Reactor Oversight Process. The NRC staff concludes that any potential adverse impact on nuclear plant safety due to an open phase condition (OPC) in the plant offsite power system has been adequately addressed by the licensees.

DATES: NRC Bulletin 2012–01 is closed effective March 6, 2023.

ADDRESSES: Please refer to NRC–2023–0036 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for NRC–2023–0036. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in

this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wendell Morton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1658, email: *Wendell.Morton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is providing this technical summary in this **Federal Register** notice (FRN) to explain the basis for closure of ''NRC Bulletin 2012–01: Design Vulnerability in Electric Power System.'' This FRN informs external stakeholders that the adverse impacts on nuclear plant safe operation due to an OPC in the plant offsite power system have been adequately addressed, and the Bulletin is closed.

II. Background

An OPC event occurred in the offsite power circuit at Bryon Unit 2 on January 30, 2012. The station auxiliary transformer (SAT) (offsite power source) high-voltage side event caused unbalanced voltage conditions on the low-voltage side of the SAT, which led to a reactor trip and tripping of certain safety related loads. The existing undervoltage degraded voltage protection scheme failed to detect the unbalanced voltage and did not automatically separate the degraded offsite power source from the onsite power source. Operator action was required to bring the plant to a safe shutdown condition. The event is further described in the ''Availability of Documents'' section.

In addition to the event previously described, two additional events were discussed in NRC Information Notice 2012–03. In these events, the OPC occurred on the offsite circuits that usually remain energized without a load or with a light load during normal conditions. At the related plants, the safety and non-safety-related loads are normally fed from the main generator through unit auxiliary transformers, therefore the offsite circuits that feed the safety-related loads during plant startup or after unit trip usually remain on no-load or are lightly loaded during normal plant conditions. The OPCs at these plants were not detected for many days. If a design basis event had occurred simultaneously, the unbalanced voltages at the safety-related buses would have increased due to shifting of loads from unit auxiliary transformers to offsite circuits due an OPC and could impact the safety of plants. The degree of unbalanced voltage conditions on the plant buses due to an OPC in the offsite power circuit is dependent on the offsite circuit design parameters, plant configuration, and plant loading conditions. The unbalanced voltage condition can potentially lead to either degraded operation of the safety-related loads if the voltage unbalance is small (about five percent or less) or tripping of the safety-related loads if the voltage unbalance is large, either of which is an unsafe condition. Therefore, the timely mitigation of an OPC is necessary to ensure the safety of the plant.

In light of the Byron and other events, on July 27, 2012, the NRC issued Bulletin 2012–01: Design Vulnerability in Electric Power System. The Bulletin required that all holders of operating licenses and combined licenses for nuclear power reactors verify compliance with the regulatory requirements of General Design Criterion (GDC) 17, ''Electric Power Systems,'' in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) or the applicable principal design criteria in the licensees' updated final safety analysis report; and the design criteria for protection systems under 10 CFR 50.55a(h)(2) or 10 CFR 50.55a(h)(3). The licensees were requested to describe plant design features that would allow the existing protective schemes to detect and respond to an OPC.

Licensees provided responses to the Bulletin and the NRC staff issued a summary report of the responses on February 26, 2013. In the summary report, the staff determined that for the operating plants, one or both trains of safety related electrical buses could be affected by an OPC. The NRC staff became aware of the OPC during an event at Byron Unit 2 that rendered both the offsite power system and the onsite power system unable to perform their intended safety functions. The NRC determined further regulatory action was required to ensure detection and automatic system response to an OPC at nuclear power plants. Further, the NRC determined that licensees should ensure that offsite and onsite electric power systems would remain available to permit the functioning of structures, systems, and components important to safety in the event of anticipated operational occurrences and accidents.

III. Discussion

Two public meetings were held with industry on February 13, 2013, and June 13, 2013, in which various industry representatives presented possible solutions for the detection and protection from the new challenge faced due to OPCs. The minutes from these meetings as well as presentations by industry representatives are available in the ''Availability of Documents'' section.

In its letter dated October 9, 2013, Nuclear Energy Institute (NEI) provided a voluntary industry initiative plan, which included a formal commitment by the licensees to address plant vulnerabilities due to potential OPCs. The initiative goal and definition included: an OPC will not prevent functioning of important-to-safety structures, systems, and components. An OPC is defined as an open phase, with or without a ground, which is located on the high voltage side of a transformer connecting a GDC 17 off-site power circuit to the transmission system. The initiative was slated for completion by December 31, 2017.

Bulletin 2012–01 stated that GDC 17 in 10 CFR part 50, Appendix A, and 10 CFR 50.55a(h)(2) for operating plants or 10 CFR 50.55a(h)(3) for any plants after May 13, 1999, are applicable.

In its letter dated March 21, 2014, NEI provided its perspective that the protection system requirements described in 10 CFR 50.55a(h)(2), ''Protection systems,'' do not apply to the Open Phase Isolation Systems (OPISs).

In the letter dated August 14, 2014, NEI provided the industry position with respect to various regulatory issues related to OPC.

The NRC provided a November 25, 2014, response to NEI to address the issues raised in the March 2014 and August 2014 letters, and explained that to address OPCs, four functional requirements should be met. The letter also stated that until each licensee has addressed OPCs and informed the NRC that it is in full compliance with GDC 17, or the principal design criteria specified in the updated final safety analysis report for the specific plant regarding OPC, the staff would be recommending an interim enforcement policy (IEP) to the Commission.

NEI provided Revision 1 of the voluntary industry initiative dated March 16, 2015, with a schedule change for OPC modifications completion from

December 31, 2017, to December 31, 2018.

In SECY–16–0068, dated May 31, 2016, the NRC staff proposed a revision to the Enforcement Policy to permit the staff to exercise enforcement discretion for certain noncompliance's with technical specifications or GDC 17, and certain nonconformances with the analogous principal design criteria specified in the updated final safety analysis report, as well as noncompliance's with 10 CFR 50.55a(h)(2) or 10 CFR 50.55a(h)(3), and 10 CFR 50.36. The potential violations could be those associated with inoperable electrical power systems (offsite and onsite) caused by an OPC design vulnerability in the offsite electric power system that would require a reactor shutdown or prevent a reactor startup if a licensee could not come into conformance within the technical specification required completion times.

In SRM–SECY–16–0068 dated March 9, 2017, the Commission disapproved the staff's request to establish an IEP. Instead, the Commission directed the staff to (1) verify that licensees have appropriately implemented the voluntary industry initiative; (2) update the Reactor Oversight Process to provide periodic oversight of industry's implementation of the OPC initiative; and (3) close the Bulletin once satisfactory implementation of the technical resolution has been verified for each licensee.

On October 31, 2017, the NRC staff issued Temporary Instruction 2515/194, to verify that licensees appropriately implemented the NEI voluntary industry initiative. The NRC inspectors verified implementation at plants where OPC modifications were substantially complete.

NEI provided Revision 2 of the voluntary industry initiative, dated September 20, 2018, with the completion schedule changed from December 31, 2018, to December 31, 2019. NEI stated that many plants had completed installation of OPIS with other plants scheduled to complete during 2018. However, the monitoring data to date had indicated that installed OPISs would have experienced undesirable spurious actuations if the automatic trip functions had been activated. NEI proposed extended monitoring periods so that licensees could refine OPIS setpoints to minimize spurious actuations.

Due to continuing spurious actuations of OPIS designs observed at some plants, NEI provided Revision 3 dated June 6, 2019, of the initiative. This revision included an option to perform a risk evaluation under certain boundary conditions to support an alarm and manual response to an OPC, instead of an automatic trip response. For plants adopting the risk-informed option, the OPIS design would change from ''alarm and automatically trip (isolate)'' to ''alarm (detect) and manual actions'' to isolate the OPC. Written plant alarm response procedures would allow operators to diagnose and take manual actions to mitigate an OPC. NEI also separately provided NEI 19–02, ''Guidance for Assessing Open Phase Condition Implementation Using Risk Insights,'' referenced in Revision 3 of the initiative.

To evaluate whether safety significance justified requiring automatic OPIS actuation, the NRC staff performed a backfit screening and documented the results in a memo dated May 21, 2020. The analysis determined that automatic OPIS actuation would not result in a substantial increase in the overall protection of the public health and safety. Therefore, the risk-informed option in Revision 3 to the voluntary industry initiative was acceptable.

On August 18, 2020, the NRC staff issued Revision 2 of the Temporary Instruction 2515/194, to verify that licensees have appropriately implemented the NEI voluntary industry initiative, including licensees that adopted the risk-informed option. For licensees where OPIS implementation was still in the monitoring mode and spurious initiations continued to occur, many changed to the risk-informed option of the voluntary industry initiative. Approximately 65 percent of operating power reactors have adopted the risk-informed option. This change, and the COVID–19 pandemic, resulted in delays in licensees' implementation of the voluntary industry initiative and the subsequent inspections at many plants.

As required by SRM–SECY–16–0068, the Reactor Oversight Process Inspection Procedures and the Inspection Manual Chapter were revised to provide periodic oversight of industry's implementation of the OPC voluntary industry initiative.

IV. Conclusion

The staff issued closure letters to each licensee other than Southern Nuclear Company for Vogtle Units 3 and 4. ADAMS accession numbers to these letters are in the ''Availability of Documents'' section. The closure letters provide further details concerning how licensees addressed OPC at their facilities.

The staff has approved the actions to be taken by the licensee for Vogtle Units 3 and 4 following commencement of operations, by letter dated July 5, 2019, agreeing to the due dates and will inspect these actions under the Reactor Oversight Process. By letter dated August 29, 2018, Southern Nuclear Company to NRC (Vogtle Units 3 and 4), provided regulatory commitments and due dates regarding the OPC.

The licensees of the following plants received Bulletin 2012–01, but subsequently permanently ceased operation prior to addressing the Bulletin: Crystal River 3; Duane Arnold; Fort Calhoun; Indian Point 2; Kewaunee; Oyster Creek; Palisades; Pilgrim 1; San Onofre 2; San Onofre 3; Three Mile Island 1; Vermont Yankee.

Based on the actions taken by the NRC and licensees in response to the Bulletin, the NRC staff finds that all operating plants will continue to operate safely or safely shut down in response to an OPC event. Therefore, Bulletin 2012–01 is closed.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
Information Notice 2012–03: Design Vulnerability in Electric Power System, dated March 1, 2012	ML120480170.
Presentation by Exelon Nuclear—Byron Station Single Phase Failure, dated March 22, 2012	ML120810365.
Licensee Event Report 2012–001–01 ''Unit 2 Loss of Normal Offsite Power and Reactor Trip and Unit 1 Loss of Normal Offsite Power Due to Failure of System Auxiliary Transformer Inverted Insulators,'' dated September 28, 2012.	ML12272A358.
Byron Unit 2—NRC Special Inspection Team (SIT) Report, dated March 27, 2012	ML12087A213.
Bulletin 2012–01: Design Vulnerability in Electric Power System, dated July 27, 2012	ML12074A115.
Summary report of licensee responses, dated February 26, 2013	ML13052A711.
Public meeting summary	ML13066A774 (package).
Public meeting summary	ML13196A002 (package).

Document description	ADAMS accession No.
Nuclear Energy Institute (NEI) voluntary industry initiative plan, dated October 9, 2013	ML13333A147.
NEI perspective letter on Open Phase Isolation Systems (OPISs), dated March 21, 2014	ML14087A252 (package).
NEI letter that provided the industry position with respect to various regulatory issues related to OPC, dated August 14, 2014.	ML14226A804 (package).
NRC's response to NEI to address the issues raised in the March 2014 and August 2014 letters, and explained that to address OPCs, four functional requirements should be met, dated November 25, 2014.	ML14120A203.
NEI Revision 1 of the voluntary industry initiative plan, dated March 16, 2015	ML15075A454 (package).
SECY–16–0068, dated May 31, 2016	ML15219A327, Enclosure ML15219A330.
SRM–SECY–16–0068, dated March 9, 2017	ML17068A297.
NRC staff issued Temporary Instruction 2515/194, dated October 31, 2017	ML17137A416.
NEI Revision 2 of the voluntary industry initiative, dated September 20, 2018	ML18268A114.
NEI Revision 3 of the voluntary industry initiative, dated June 6, 2019	ML19163A176.
NEI 19–02, "Guidance for Assessing Open Phase Condition Implementation Using Risk Insights," dated June 20, 2019.	ML19172A086.
NRC backfit screening memo, dated May 21, 2020	ML19198A304.
NRC Revision 2 of the Temporary Instruction 2515/194, dated August 18, 2020	ML20230A328.
NRC Response to Supplemental Information for Bulletin 2012–01, Vogtle 3 and 4 (052–25 and 52–026), dated July 5, 2019.	ML19182A206.
Vogtle, Units 3 and 4, Supplement to Response to NRC Bulletin 2012–01, Design Vulnerability in Electric Power System, dated August 29, 2018.	ML18242A012.
Arkansas Nuclear 1 Closure Letter, dated March 5, 2021	ML21049A307.
Arkansas Nuclear 2 Closure Letter, dated March 5, 2021	ML21049A307.
Beaver Valley 1 Closure Letter, dated July 15, 2022	ML22189A184.
Beaver Valley 2 Closure Letter, dated July 15, 2022	ML22189A184.
Braidwood 1 Closure Letter, dated April 27, 2021	ML21102A182.
Braidwood 2 Closure Letter, dated April 27, 2021	ML21102A182.
Browns Ferry 1 Closure Letter, dated May 1, 2020	ML20104A192.
Browns Ferry 2 Closure Letter, dated May 1, 2020	ML20104A192.
Browns Ferry 3 Closure Letter, dated May 1, 2020	ML20104A192.
Brunswick 1 Closure Letter, dated October 12, 2021	ML21278A002.
Brunswick 2 Closure Letter, dated October 12, 2021	ML21278A002.
Byron 1 Closure Letter, dated April 27, 2021	ML21102A182.
Byron 2 Closure Letter, dated April 27, 2021	ML21102A182.
Callaway Closure Letter, dated July 27, 2021	ML21201A105.
Calvert Cliffs 1 Closure Letter, dated September 7, 2021	ML21225A432.
Calvert Cliffs 2 Closure Letter, dated September 7, 2021	ML21225A432.
Catawba 1 Closure Letter, dated October 19, 2021	ML21272A183.
Catawba 2 Closure Letter, dated October 19, 2021	ML21272A183.
Clinton Closure Letter, dated July 8, 2022	ML22186A150.
Columbia Closure Letter, dated June 29, 2021	ML21165A344.
Comanche Peak 1 Closure Letter, dated July 26, 2023	ML23025A353.
Comanche Peak 2 Closure Letter, dated July 26, 2023	ML23025A353.
Cooper Closure Letter, dated November 22, 2021	ML21323A074.
D.C. Cook 1 Closure Letter, dated May 26, 2021	ML22146A113.
D.C. Cook 2 Closure Letter, dated May 26, 2021	ML22146A113.
Davis-Besse Closure Letter, dated July 21, 2022	ML22195A223.
Diablo Canyon 1 Closure Letter, dated April 29, 2022	ML22108A286.
Diablo Canyon 2 Closure Letter, dated April 29, 2022	ML22108A286.
Dresden 2 Closure Letter, dated April 27, 2021	ML21102A182.
Dresden 3 Closure Letter, dated April 27, 2021	ML21102A182.
Farley 1 Closure Letter, dated August 23, 2021	ML21216A316.
Farley 2 Closure Letter, dated August 23, 2021	ML21216A316.
Fermi 2 Closure Letter, dated July 21, 2022	ML22188A089.
FitzPatrick Closure Letter, November 16, 2021	ML21300A006.
Ginna Closure Letter, dated September 20, 2021	ML21245A098.
Grand Gulf Closure Letter, dated March 5, 2021	ML21049A307.
Harris 1 Closure Letter, dated September 29, 2021	ML21252A389.
Hatch 1 Closure Letter, dated September 20, 2021	ML21253A113.
Hatch 2 Closure Letter, dated September 20, 2021	ML21253A113.
Hope Creek 1 Closure Letter, dated March 11, 2022	ML22060A057.
Indian Point 3 Closure Letter, dated March 5, 2021	ML21049A307.
La Salle 1 Closure Letter, dated April 27, 2021	ML21102A182.
La Salle 2 Closure Letter, dated April 27, 2021	ML21102A182.
Limerick 1 Closure Letter, dated September 13, 2021	ML21245A084.
Limerick 2 Closure Letter, dated September 13, 2021	ML21245A084.
McGuire 1 Closure Letter, dated October 27, 2021	ML21293A026.
McGuire 2 Closure Letter, dated October 27, 2021	ML21293A026.
Millstone 2 Closure Letter, dated November 15, 2021	ML21295A412.
Millstone 3 Closure Letter, dated November 15, 2021	ML21295A412.
Monticello Closure Letter, dated July 29, 2022	ML22189A019.
Nine Mile Point 1 Closure Letter, dated September 7, 2021	ML21239A052.
Nine Mile Point 2 Closure Letter, dated September 7, 2021	ML21239A052.
North Anna 1 Closure Letter, dated May 5, 2020	ML20065L173.

Document description	ADAMS accession No.
North Anna 2 Closure Letter, dated May 5, 2020	ML20065L173.
Oconee 1 Closure Letter, dated February 17, 2022	ML22045A024.
Oconee 2 Closure Letter, dated February 17, 2022	ML22045A024.
Oconee 3 Closure Letter, dated February 17, 2022	ML22045A024.
Palo Verde 1 Closure Letter, April 20, 2022	ML22102A262.
Palo Verde 2 Closure Letter, April 20, 2022	ML22102A262.
Palo Verde 3 Closure Letter, April 20, 2022	ML22102A262.
Peach Bottom 2 Closure Letter, dated September 7, 2021	ML21196A010.
Peach Bottom 3 Closure Letter dated September 7, 2021	ML21196A010.
Perry 1 Closure Letter, dated July 13, 2022	ML22189A177.
Point Beach 1 Closure Letter, dated July 13, 2021	ML21187A153.
Point Beach 2 Closure Letter, dated July 13, 2021	ML21187A153.
Prairie Island 1 Closure Letter, dated May 26, 2022	ML22145A020.
Prairie Island 2 Closure Letter, dated May 26, 2022	ML22145A020.
Quad Cities 1 Closure Letter, dated April 27, 2021	ML21102A182.
Quad Cities 2 Closure Letter, dated April 27, 2021	ML21102A182.
River Bend 1 Closure Letter, dated March 5, 2021	ML21049A307.
Robinson 2 Closure Letter, dated March 29, 2022	ML22083A003.
Saint Lucie 1 Closure Letter, dated October 28, 2021	ML21281A012.
Saint Lucie 2 Closure Letter, dated October 28, 2021	ML21281A012.
Salem 1 Closure Letter, dated November 19, 2021	ML21320A204.
Salem 2 Closure Letter, dated November 19, 2021	ML21320A204.
Seabrook 1 Closure Letter, dated March 24, 2020	ML20071C899.
Sequoyah 1 Closure Letter, dated May 1, 2020	ML20104A192.
Sequoyah 2 Closure Letter, dated May 1, 2020	ML20104A192.
South Texas 1 Closure Letter, dated August 5, 2020	ML20206L260.
South Texas 2 Closure Letter, dated August 5, 2020	ML20206L260.
Surry 1 Closure Letter, dated May 5, 2020	ML20065L173.
Surry 2 Closure Letter, dated May 5, 2020	ML20065L173.
Susquehanna 1 Closure Letter, dated December 6, 2021	ML21335A422.
Susquehanna 2 Closure Letter, dated December 6, 2021	ML21335A422.
Turkey Point 3 Closure Letter, dated July 19, 2022	ML22187A277.
Turkey Point 4 Closure Letter, dated July 19, 2022	ML22187A277.
VC Summer Closure Letter, dated September 14, 2021	ML21242A330.
Vogtle 1 Closure Letter, dated October 22, 2021	ML21279A167.
Vogtle 2 Closure Letter, dated October 22, 2021	ML21279A167.
Waterford 3 Closure Letter, dated June 22, 2020	ML20171A366.
Watts Bar 1 Closure Letter, dated May 1, 2020	ML20104A192.
Watts Bar 2 Closure Letter, dated May 1, 2020	ML20104A192.
Wolf Creek 1 Closure Letter, dated February 10, 2022	ML22040A158.

Dated: March 1, 2023.

For the Nuclear Regulatory Commission.

Lisa M. Regner,

Chief, Generic Communication and Operating Experience Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–04501 Filed 3–3–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 6, 13, 20, 27, April 3, 10, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and closed.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of March 6, 2023

Tuesday, March 7, 2023

10:00 a.m. Briefing on NRC International Activities (Closed Ex. 1 and 9)

Week of March 13, 2023—Tentative

There are no meetings scheduled for the week of March 13, 2023.

Week of March 20, 2023—Tentative

There are no meetings scheduled for the week of March 20, 2023.

Week of March 27, 2023—Tentative

Thursday, March 30, 2023

9:00 a.m. Briefing on Nuclear Regulatory Research Program (Public Meeting), (Contact: Nicholas Difrancesco: 301–415–1115)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via

webcast at the Web address—*https://video.nrc.gov/.*

Week of April 3, 2023—Tentative

There are no meetings scheduled for the week of April 3, 2023.

Week of April 10, 2023—Tentative

There are no meetings scheduled for the week of April 10, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 2, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–04657 Filed 3–2–23; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

The U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) public meeting on March 28, 2023.

Board meeting: March 28, 2023—*The U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) public meeting in Orlando, FL, to review information on U.S. Department of Energy (DOE) evaluations of removing commercial spent nuclear fuel (SNF) from commercial nuclear power plants.*

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) public meeting in Orlando, FL, on Tuesday, March 28, 2023, to review information on U.S. Department of Energy (DOE) evaluations, planning, and preparations for transport of commercial spent nuclear fuel (SNF) from commercial nuclear power plants.

The Board meeting will be held at The Florida Hotel and Conference Center, 1500 Sand Lake Road, Orlando, FL 32809. The hotel telephone number is (407) 859–1500.

The meeting will begin at 8:00 a.m. Eastern Daylight Time (EDT) and is scheduled to adjourn at 5:00 p.m. EDT. Speakers from the DOE Office of Nuclear Energy will describe recent accomplishments and future priorities in DOE's integrated waste management program and its strategy for management and disposal of SNF, including use of a consent-based siting process. DOE speakers will address nuclear power plant infrastructure evaluations for removing commercial SNF, site-specific logistic reports, and Atlas and Fortis railcar developments. There will be a panel discussion providing tribal perspectives on transportation and consent-based siting. A national laboratory speaker will address analysis of as-loaded conditions of storage containers of commercial SNF. A speaker from the U.S. Nuclear Regulatory Commission will present information on regulatory readiness for oversight of large-scale commercial transportation of SNF. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public and there will be an opportunity for public comment at the end of each day. Those attending the meeting in person and wanting to provide oral comments are encouraged to sign the Public Comment Register at the check-in table near the entrance to the meeting room. Oral commenters will be taken in the order in which they signed in. Public comments can also be submitted during the meeting via the online meeting viewing platform, using the ''Comment for the Record'' form. Comments submitted online during each day of the meeting will be read into the record by Board staff during the public comment period just prior to adjournment. Depending on the number of speakers and online comments, a time limit on individual remarks may be set. However, written comments of any length may be submitted to the Board staff by mail or electronic mail. All comments received in writing will be included in the meeting record, which will be posted on the Board's website after the meeting. An archived recording of the meeting will be available on the Board's website following the meeting, and a transcript of the meeting will be available on the website by May 30, 2023.

The in-person public meeting will follow the COVID–19 precautions mandated by the local jurisdiction. Meeting attendees should observe community guidelines in place at the time of the meeting. The Board will post an update on its website if the meeting changes to a virtual-only meeting. Attendees also are encouraged to pre-register to reduce their time signing in. If the meeting changes to a virtual-only format, those who pre-registered will be notified of the change.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and HLW, and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Yoonjo Lee at *lee@nwtrb.gov* or Bret Leslie at *leslie@nwtrb.gov.* For information on logistics, to pre-register for the in-person meeting, or to request copies of the meeting agenda or transcript, contact Davonya Barnes at *barnes@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: March 1, 2023.

Neysa M. Slater-Chandler,

Director of Administration, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2023–04508 Filed 3–3–23; 8:45 am]

BILLING CODE 6820–AM–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–455, OMB Control No. 3235–0514]

Proposed Collection; Comment Request; Extension: Rule 8c–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 8c–1 (17 CFR 240.8c–1), under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection

of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, Rule 8c–1 states three main principles: (1) a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; (2) a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and (3) a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. Additionally, Rule 8c–1 requires broker-dealers to make certain written notifications to pledgees in connection with such use of customer securities as collateral.[1]

The information required by Rule 8c–1 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent broker-dealers from hypothecating or arranging for the hypothecation of any securities carried for the account of any customer under certain circumstances. In addition, the information required by Rule 8c–1 provides important investor protections.

There are approximately 43 respondents as of the end of 2022 (*i.e.,* broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year). Each respondent makes an estimated 45 annual responses, for an aggregate total of approximately 1,935 responses per year.[2] Each response takes approximately 0.5 hours to complete. Therefore, the total third-party disclosure burden per year is approximately 968 hours.[3]

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by May 5, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 1, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04541 Filed 3–3–23; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Exchange Act Release No. 2690 (November 15, 1940); Exchange Act Release No. 9428 (December 29, 1971).

[2] 43 respondents × 45 annual responses = 1,935 aggregate total of annual responses.

[3] 1,935 responses × 0.5 hours = 967.5 hours, rounded up to 968 hours.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 9, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 2, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–04615 Filed 3–2–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–312, OMB Control No. 3235–0354]

Submission for OMB Review; Comment Request; Extension: Rule 19b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 19(b) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered investment company (''fund'') distributions of long-term capital gains made more frequently than once every twelve months. Accordingly, rule 19b–1 under the Act (17 CFR 270.19b–1) regulates the frequency of fund distributions of capital gains. Rule 19b–1(c) states that the rule does not apply to a unit investment trust (''UIT'') if it is engaged exclusively in the business of investing in certain eligible securities (generally, fixed-income securities), provided that: (i) the capital gains distribution falls within one of five categories specified in the rule [1] and (ii)

[1] 17 CFR 270.19b–1(c)(1).

the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the ''notice requirement'').[2] Rule 19b–1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains that would otherwise be prohibited by the rule if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.[3] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that one fund will file an application under rule 19b–1(e) each year.[4] The staff understands that if a fund files an application it generally uses outside counsel to prepare the application. The cost burden of using outside counsel is discussed in Item 13 below. The staff estimates that, on average, a fund's investment adviser would spend approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of $510 per hour and 0.5 hours by an administrative assistant at a cost of $89 per hour, and the fund's board of directors would spend an additional 1 hour at a cost of $4,770 per hour, for a total of 5 hours.[5] Thus, the staff estimates that the annual hour burden of the collection of information imposed by rule 19b–1(e) would be approximately five hours per fund, at a cost of $6,599.50.[6] Because the staff estimates that, each year, one fund will file an application pursuant to rule 19b–1(e), the total burden for the information collection is 5 hours at a cost of $6,599.50.

Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b–1(c). This estimate assumes that UITs using rule 19b–1(c) do not have their own employees or staff and that the mechanics of the notice requirement would be handled by a UIT sponsor or trustee as an accommodation for the UIT. As such, the costs related to this aspect of the collection of information are captured in the external cost estimates below.

As noted above, Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application.[7] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $531per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b–1(e) exemptive application is $5,310.[8] Because the staff estimates that, each year, one fund will file an application pursuant to rule 19b–1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is estimated to be $5,130.

The Commission staff estimates that there are approximately 1,779 UITs that may rely on rule 19b–1(c) to make capital gains distributions.[9] The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[10] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practice, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing and distributing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50.[11] Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $88,950.[12] The staff therefore estimates that the total cost imposed by rule 19b–1 is $94,260.[13]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 5, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

[2] The notice requirement in rule 19b–1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)], which requires any distribution in the nature of a dividend payment to be accompanied by a notice disclosing the source of the distribution.

[3] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02] under the Act, which sets forth the general requirements for papers and applications filed with the Commission pursuant to the Act and rules thereunder.

[4] This estimate is based on the average number of applications filed with the Commission pursuant to rule 19b–1(e) in the prior three-year period.

[5] The estimate for assistant general counsels is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The estimate for administrative assistants is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,770.

[6] This estimate is based on the following calculations: $1,785 (3.5 hours × $510 = $1,785) plus $44.5 (0.5 hours × $89 = $44.5) plus $4,770 equals $6,599.50 (cost of one application).

[7] This understanding is based on conversations with representatives from the fund industry.

[8] This estimate is based on the following calculation: 10 hours multiplied by $531 per hour equals $5,310.

[9] *See* 2022 Investment Company Fact Book, Investment Company Institute, *available at https://www.icifactbook.org/pdf/2022_factbook.pdf* (totaling the number of taxable debt and tax-free debt UITs presented in Table 14).

[10] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other intervals. Additionally, a number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements.

[11] Although the $50 estimate is consistent with prior renewals it is possible that the actual costs have decreased over time as a result of electronic automation or other efficiencies. In an abundance of a caution, and for purposes of this Paperwork Reduction Act renewal, we are assuming on a conservative basis that this cost has not changed.

[12] This estimate is based on the following calculation: 1,779 UITs multiplied by $50 equals $88,950.

[13] This estimate is based on the following calculation: $88,950. (total cost associated with rule 19b–1(c)) + $5,310 (total cost associated with rule 19b–1(e)) = $94,260.

Dated: March 1, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04525 Filed 3–3–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12001]

Regional Meeting of the Binational Bridges and Border Crossings Group in Las Cruces, New Mexico

ACTION: Notice of a meeting.

SUMMARY: Delegates from the United States and Mexican governments, the states of New Mexico and Texas, and the Mexican states of Chihuahua, Coahuila, Nuevo Laredo, and Tamaulipas will participate in a regional meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on Tuesday, March 28, 2023, in Las Cruces, New Mexico. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure and to exchange technical information as well as views on policy. This meeting will include a public session on Tuesday, March 28, 2023 from 8:30 a.m. until 11:30 a.m. This session will allow proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

DATES: March 28, 2023.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting and to attend the public session, please contact the Office of Mexican Affairs' Border Affairs Unit via email at *WHA-BorderAffairs@state.gov,* by phone at 202–647–9364, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW, Washington, DC 20520.

Hillary Quam,

Border Coordinator, Office of Mexican Affairs, Department of State.

[FR Doc. 2023–04497 Filed 3–3–23; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0056]

BNSF Railway's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on February 1, 2023, BNSF Railway (BNSF) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by March 19, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0056. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on February 1, 2023, BNSF submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), and that RFA is available in Docket No. FRA–2010–0056.

Interested parties are invited to comment on BNSF's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–04455 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0059]

Kansas City Southern Railway Company's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on February 17, 2023, the Kansas City Southern Railway Company (KCS) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by March 27, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0059. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on February 17, 2023, KCS submitted an RFA to its Interoperable Electronic Train Management System (I–ETMS), and that RFA is available in Docket No. FRA–2010–0059.

Interested parties are invited to comment on KCS's RFA by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–04456 Filed 3–3–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2023 Supplemental Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Solicitation of supplemental applications.

SUMMARY: This document contains a notice that the IRS has provided a supplemental grant opportunity in *www.grants.gov* for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching supplemental grant. The budget and the period of performance for the supplemental grant will be July 1, 2023–December 31, 2023. The application period runs from March 7, 2023, through April 18, 2023. Due to the Consolidated Appropriations Act, 2023, the LITC Program Office has more funding for fiscal year 2023, and the maximum amount of an award an organization can receive for year 2023 has been increased from $100,000 to $200,000. Organizations currently receiving an LITC grant for 2023 are also eligible for an increase in funding up to $200,000 (including any funds already awarded); however, those organizations do not need to apply in response to this notice and instead will be contacted directly by the LITC Program Office. For all other organizations applying for a supplemental grant for the remainder of 2023, the following process applies.

DATES: All supplemental applications must be filed electronically by 11:59 p.m. (Eastern Time) on April 18, 2023. All organizations must use the funding number of TREAS–GRANTS–052023–002, and the Catalog of Federal Domestic Assistance program number is 21.008, see *www.sam.gov.* The LITC Program Office is scheduling a webinar for March 9, 2023, to cover the full application process. See *www.irs.gov/advocate/low-income-taxpayer-clinics* for complete details, including posting materials and any changes to the date and time.

FOR FURTHER INFORMATION CONTACT: Karen Tober at (202) 317–9590 (not a toll-free number) or by email at *karen.tober@irs.gov.* The LITC Program Office is located at: IRS, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA: LITC, 1111 Constitution Avenue NW, Room 1034, Washington, DC 20224. Copies of the *2023 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev.

5–2022), can be downloaded from the IRS internet site at *https://www.taxpayeradvocate.irs.gov/about-us/litc-grants/* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676. See *https://youtu.be/6kRrjN-DNYQ* for a short video about the LITC Program. Note, however, that some provisions of the Publication 3319 are now out of date. To assist organizations in applying for supplemental funding, the ''Reminders and Tips for Completing Form 13424–M'' available at *https://www.taxpayeradvocate.irs.gov/about-us/litc-grants/* will include details about the out-of-date provisions, including instructions for which questions an organization should complete if requesting funding only for the taxpayer education pilot program described in this notice.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 26 U.S.C. 7526, the IRS will annually award up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualified organizations, subject to the limitations in the statute. In the recently enacted Consolidated Appropriations Act, 2023, Congress appropriated $26,000,000 for the LITC Program for fiscal year 2023. See Public Law 117–328, Division E. Grants may be awarded for the development, expansion, or continuation of programs providing qualified services. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year. At least 90 percent of the taxpayers represented by the clinic must have incomes which do not exceed 250 percent of the poverty level as determined under criteria established by the Director of the Office of Management and Budget. See 88 FR 3424–25 (Jan. 19, 2023). In addition, the amount in controversy for the tax year to which the controversy relates generally cannot exceed the amount specified in Internal Revenue Code (IRC) section 7463 ($50,000) for eligibility for special small tax case procedures in the United States Tax Court. IRC section 7526(c)(5) requires dollar-for-dollar matching funds.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low-income or speak English as a second language by: providing *pro bono* representation on their behalf in tax disputes with the IRS; educating them about their rights and responsibilities as taxpayers; and identifying and advocating for issues that impact these taxpayers.

Expansion of the Type of Qualified Services an Organization Can Provide

In recent years, the IRS has awarded grants to organizations that represent low-income taxpayers in controversies before the IRS and provide education to taxpayers who speak English as a second language (ESL taxpayers) regarding their rights and responsibilities. Previously, the IRS would not award a grant to an organization solely referring taxpayers to other qualified representatives. Similarly, the IRS required organizations to provide controversy representation in addition to education to eligible taxpayers.

Due to the Consolidated Appropriations Act, 2023, the LITC Program Office has more funding available for fiscal year 2023, and the maximum amount of an award an organization can receive for 2023 has been doubled. In addition, the Covid-19 pandemic has brought about several positive changes in how LITCs can provide services virtually to low-income and ESL taxpayers and has caused the LITC Program Office to reconsider some grant award policies consistent with statutory authority. To achieve maximum access to justice for low-income and ESL taxpayers, the LITC Program Office is expanding the eligibility criteria for a grant by removing the requirement for eligible organizations to provide direct controversy representation. Specifically, under this expansion, a qualified organization may receive a grant for the following activities of (1) referring low-income taxpayers in a controversy with the IRS to a qualified representative instead of providing controversy representation directly to those taxpayers; or (2) operating a pilot program to inform ESL taxpayers about their taxpayer rights and responsibilities without also providing controversy representation.

Thus, a qualified organization is one that (1) ensures low-income taxpayers have access to representation (either by providing the representation directly, or providing it indirectly with a referral to a qualified representative) in controversies with the IRS, or that (2) provides ESL taxpayers education about their taxpayer rights and responsibilities.

Although a qualified organization is no longer required to provide both representation and education services, organizations are still encouraged to provide both services, if their resources allow. A qualified organization must not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred).

Examples of a qualified organization include: (1) a clinical program at an accredited law, business, or accounting school whose students represent low-income taxpayers in tax controversies with the IRS (and when necessary, refer to qualified volunteers to provide representation when the students cannot do so), (2) an organization exempt from tax under IRC section 501(a) whose employees and volunteers represent low-income taxpayers in controversies with the IRS, (3) an organization exempt from tax under IRC section 501(a) whose employees and volunteers refer to qualified representatives to provide representation, (4) an organization that operates a program to inform ESL taxpayers about their taxpayer rights and responsibilities, and (5) an organization that operates a program to inform ESL taxpayers about their taxpayer rights and responsibilities and functions as a referral service to refer taxpayers to qualified representatives for controversy representation, but such organization must be tax-exempt under section 501(a).

The ability to satisfy the representation component of the LITC mission through referral of taxpayers to qualified representatives will be permanently incorporated into the LITC Program. Currently, the pilot program on educating ESL taxpayers without also providing controversy representation is only for the remainder of the 2023 grant year. Depending on the success of organizations awarded a grant for the pilot program, the LITC Program Office will determine whether to continue the pilot program in subsequent grant years.

Selection Consideration

Despite the IRS's efforts to foster parity in availability and accessibility in choosing organizations receiving LITC matching grants and the continued increase in clinic services nationwide, there remain communities that are underserved by clinics. The states of Hawaii, Montana, Nevada, North Dakota, and the territory of Puerto Rico currently do not have an LITC. In addition, two states—Arizona and Florida—have only partial coverage. The uncovered counties in those states are:

Florida: Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Hamilton, Hemando, Lafayette, Madison, Nassau, St. Johns, Sumter, Suwannee, and Taylor.

Arizona: Apache, Coconino, and Navajo.

Although each application for the 2023 grant year will be given due consideration, the IRS is interested in receiving applications from organizations providing services in those underserved geographic areas. For organizations that intend to refer low-income taxpayers in controversies with the IRS to other qualified representatives, priority will be given to established organizations that can help provide coverage to underserved geographic areas. For the taxpayer education pilot program, special consideration will be given to established organizations with existing community partnerships that can swiftly implement and deliver services to the target audiences.

As in prior years, the IRS will consider a variety of factors in determining whether to award a grant, including: (1) the number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low-income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, in providing services to low-income taxpayers; (4) the quality of the organization, including the reasonableness of the proposed budget; (5) the organization's compliance with all federal tax obligations (filing and payment); (6) the organization's compliance with all federal nontax monetary obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies or whether the organization is otherwise excluded from or ineligible for a federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributors and the endowment and resources of the institution sponsoring the organization.

In addition, the IRS will consider two additional factors for organizations that refer taxpayers to other qualified representatives: (1) the quality of the representatives (attorneys, certified public accountants (CPAs), or enrolled agents (EAs) who have agreed to accept taxpayer referrals from an LITC and provide representation or consultation services free of charge; and (2) the quality of the organization to monitor referrals and ensure that the pro bono representatives are handling the cases properly, including taking timely case actions and ensuring services are offered for free.

Applications that pass the eligibility screening process will then be subject to technical review. Details regarding the scoring process can be found in Publication 3319. The final funding decisions are made by the National Taxpayer Advocate, unless recused. The costs of preparing and applying are the responsibility of each applicant. Applications may be released in response to Freedom of Information Act requests. Therefore, applicants must not include any individual taxpayer information.

The LITC Program Office will notify each applicant in writing once funding decisions have been made. Applicants that want to be considered for 2024 grant year funding will need to apply for a separate grant when the applicable application period opens on or about May 1, 2023.

Kim S. Stewart,

Deputy National Taxpayer Advocate.

[FR Doc. 2023–04499 Filed 3–3–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Specially Adapted Housing Assistive Technology Grant Program Funding Opportunity

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Veterans Affairs (VA) is publishing the announcement of the availability of funds for the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program for fiscal year (FY) 2023. The objective of the grant is to encourage the development of new assistive technologies for Specially Adapted Housing (SAH). This notice is intended to provide applicants with the information necessary to apply for the SAHAT Grant Program. VA strongly recommends referring to the SAHAT Grant Program regulation in conjunction with this notice. The registration process described in this notice applies only to applicants who will register to submit project applications for FY 2023 SAHAT Grant Program funds.

DATES: Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* by 11:59 p.m. Eastern Standard Time on February 15, 2023. Awards made for the SAHAT Grant Program will fund operations for FY 2023. The SAHAT Grant Program application package for funding opportunity VA–SAHAT–23–08 is available through *www.Grants.gov* and is listed as VA-Specially Adapted Housing Assistive Technology Grant Program. Applications may not be sent by mail, email or facsimile. All application materials must be in a format compatible with the *www.Grants.gov* application submission tool.

Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Technical assistance with the preparation of an initial SAHAT Grant Program application is available by contacting the program official listed below.

FOR FURTHER INFORMATION CONTACT: Jason Latona, Chief, Specially Adapted Housing, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9201 or *Jason.Latona@va.gov.* This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: This notice is divided into eight sections. Section I provides a summary of and background information on the SAHAT Grant Program as well as the statutory authority, desired outcomes, funding priorities, definitions and delegation of authority. Section II covers award information, including funding availability and the anticipated start date of the SAHAT Grant Program. Section III provides detailed information on eligibility and the threshold criteria for submitting an application. Section IV provides detailed application and submission information, including how to request an application, application content and submission dates and times. Section V describes the review process, scoring criteria and selection process. Section VI provides award administration information such as award notices and reporting requirements. Section VII lists agency contact information. Section VIII provides additional information related to the SAHAT Grant Program. This notice includes citations from 38 CFR 36, and VA Financial Policy, Volume X Grants Management, which applicants and stakeholders are expected to read to increase their knowledge and understanding of the SAHAT Grant Program.

Program Description

Summary

Pursuant to the Veterans' Benefits Act of 2010 (Pub. L. 111–275, section 203), the Secretary of Veterans Affairs, through the Loan Guaranty Service

(LGY) of the Veterans Benefits Administration (VBA), is authorized to provide grants of financial assistance to develop new assistive technology. The objective of the SAHAT Grant Program is to encourage the development of new assistive technologies for adapted housing.

Background

LGY currently administers the SAH Grant Program. Through this program, LGY provides funds to eligible Veterans and Service members with certain service-connected disabilities to help purchase or construct an adapted home, or modify an existing home, to allow them to live more independently. Please see 38 U.S.C. 2101(a)(2)(B) and (C) and 38 U.S.C. 2101(b)(2) for a list of qualifying service-connected disabilities. Currently, most SAH adaptations involve structural modifications such as ramps; wider hallways and doorways; roll-in showers; and other accessible bathroom features, etc. For more detailed information about the SAH Grant Program, please visit *https://www.va.gov/housing-assistance/disability-housing-grants/*.

VA acknowledges that there are many emerging technologies and improvements in building materials that could improve home adaptions or otherwise enhance a Veteran's or Service member's ability to live independently. Therefore, in 38 CFR 36.4412(b)(2), VA has defined ''new assistive technology'' as an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home. New assistive technology can include advancements in new-to-market technologies, as well as new variations on existing technologies. Examples of the latter might include modifying an existing software application for use with a smart home device; upgrading an existing shower pan design to support wheelchairs; using existing modular construction methods to improve bathroom accessibility; or using existing proximity technology to develop an advanced application tailored to blind users.

Please Note: SAHAT funding does not support the construction or modification of residential dwellings for accessibility. Veterans and Service members interested in receiving assistance to adapt a home are encouraged to review the following fact sheet: *https://www.prosthetics.va.gov/factsheet/PSAS-FactSheet-Housing-Adaptation-Programs.pdf* to identify Home Adaptation programs offered by VA.

Statutory Authority

Public Law 111–275, the Veterans' Benefits Act of 2010, was enacted on October 13, 2010. Section 203 of the Act added 38 U.S.C. 2108 to establish the SAHAT Grant Program. The Act authorized VA to provide grants of up to $200,000 per FY, through September 30, 2016, to a ''person or entity'' for the development of specially adapted housing assistive technologies. For the purpose of this notice, VA refers to such persons or entities as grantees or grant recipients, and the terms are interchangeable.

On September 30, 2022, the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 was enacted (Pub. L. 117–180, section 205). Section 205 of Public Law 117–180 extended the authority for VA to provide grants in the manner listed above through September 30, 2024 (see 38 U.S.C. 2108 and 38 CFR 36.4412).

Desired Outcomes and Funding Priorities

Grantees will be expected to leverage grant funds to develop new assistive technologies for SAH. In 38 CFR 36.4412(f)(2), VA set out the scoring criteria and the maximum points allowed for each criterion. As explained in the preambles to both the proposed and final rules, while the scoring framework is set out in the regulation text, each notice will address the scoring priorities for that particular grant cycle (79 FR 53146, 53148, September 8, 2014; 80 FR 55763, 55764, September 17, 2014). For FY 2023, the Secretary has identified the categories of innovation and unmet needs as top priorities. These categories are further described as scoring criteria 1 and 2 in section V(A) of this notice. Although VA encourages innovation across a wide range of specialties, VA is, in this grant cycle, particularly interested in technologies that could help blinded Veterans optimize their independence (for example, mobile applications, safety devices and so forth). VA also has particular interest in applications that either demonstrate innovative approaches in the design and building of adaptive living spaces or would lead to new products and techniques that expedite the modification of existing spaces, so as to reduce the impact that adaptive projects can have on a Veteran's quality of life during the construction phase. VA notes that applications addressing these categories of special interest are not guaranteed selection, but they would, on initial review, be categorized as meeting the priorities for this grant cycle.

Additional information regarding how these priorities will be scored and considered in the final selection is contained in section V(A) of this notice.

Definitions

Definitions of terms used in the SAHAT Grant Program are found at 38 CFR 36.4412(b).

Delegation of Authority

Pursuant to 38 CFR 36.4412(i), certain VA employees appointed to or lawfully fulfilling specific positions within VBA are delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the SAHAT Grant Program authorized by 38 U.S.C. 2108.

Assistance Listings

The listings include the following: 64.051 Specially Adapted Housing Assistive Technology Grant Program; 64.106 Specially Adapted Housing for Disabled Veterans; and 64.118 Veterans Housing Direct Loans for Certain Disabled Veterans.

Federal Award Information

Funding Availability

Funding will be provided as an assistance agreement in the form of grants. The number of assistance agreements VA will fund as a result of this notice will be based on the quality of the technology grant applications received and the availability of funding. However, the maximum amount of assistance a technology grant applicant may receive in any fiscal year is limited to $200,000.

Additional Funding Information

Funding for these projects is not guaranteed and is subject to the availability of funds and the evaluation of technology grant applications based on the criteria in this announcement. In appropriate circumstances, VA reserves the right to partially fund technology grant applications by funding discrete portions or phases of proposed projects that relate to adapted housing. Award of funding through this competition is not a guarantee of future funding. The SAHAT Grant Program is administered annually and does not guarantee subsequent awards. Renewal grants to provide new assistive technology will not be considered under this announcement.

Start Date

As discussed in section VI(A) of this notice, the SAHAT Grant Program Office expects to announce grant recipients on or about April 1, 2023.

The anticipated start date for funding grants awarded under this announcement is therefore after May 1, 2023.

Eligibility Information

Eligible Applicants

As authorized by 38 U.S.C. 2108, the Secretary may provide a grant to a ''person or entity'' for the development of specially adapted housing assistive technologies.

Cost Sharing or Matching

There is no cost sharing, matching, or cost participation for the SAHAT Grant Program.

Threshold Criteria

All technology grant applicants and applications must meet the threshold criteria set forth below. Failure to meet any of the following threshold criteria in the application will result in the automatic disqualification for funding consideration. Ineligible participants will be notified within 30 days of the finding of disqualification for award consideration based on the following threshold criteria:

1. Projects funded under this notice must involve new assistive technologies that the Secretary determines could aid or enhance the ability of a Veteran or Service member to live in an adapted home.

2. Projects funded under this notice must not be used for the completion of work which was to have been completed under a prior grant.

3. Applications in which the technology grant applicant is requesting assistance funds in excess of $200,000 will not be reviewed.

4. Applications that do not comply with the application and submission information requirements provided in section IV of this notice will be rejected.

5. Applications submitted via mail, email or facsimile will not be reviewed.

6. Applications must be received through *www.Grants.gov,* as specified in section IV of this announcement, on or before the application deadline, as specified in the **DATES** section of this announcement. Applications received through *www.Grants.gov* after the application deadline will be considered late and will not be reviewed.

7. Technology grant applicants that have an outstanding obligation that is in arrears to the Federal Government or have an overdue or unsatisfactory response to an audit will be deemed ineligible.

8. Technology grant applicants in default by failing to meet the requirements for any previous Federal assistance will be deemed ineligible.

9. Applications submitted by entities deemed ineligible will not be reviewed.

10. Applications with project dates that extend past July 31, 2024, (this period does not include the 120-day closeout period) will not be reviewed.

All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, as found at 2 CFR part 200 (see 2 CFR 200.101(a)). Where the Secretary determines that 2 CFR part 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

Application and Submission Information

Address To Request Application Package

Technology grant applicants may download the application package from *www.Grants.gov.* Questions regarding the application process should be referred to the following program official: Oscar Hines (Program Manager), Specially Adapted Housing Program, *Oscar.Hines@va.gov*, 202–461–8316 (not a toll-free number).

Content and Form of Application Submission

The SAHAT Grant Program application package provided at *www.Grants.gov* (Funding Opportunity Number: VA–SAHAT–23–08) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided; however, letters of support included with the application will not be reviewed. All technology grant applications must consist of the following:

1. *Standard Forms (SF) 424, 424A and 424B:* SF–424; SF–424A and SF–424B require general information about the applicant and proposed project. The project budget should be described in SF–424A. Please do not include leveraged resources in SF–424A;

2. *VA Form 26–0967:* Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;

3. *VA Form 26–0967a:* Scoring Criteria for SAHAT Grants;

4. *Applications:* In addition to the forms listed above, each technology grant application must include the following information:

a. A project description, including the goals and objectives of the project, what the project is expected to achieve and how the project will benefit Veterans and Service members;

b. An estimated schedule including the length of time (not to extend past July 31, 2024) needed to accomplish tasks and objectives for the project;

c. A description of what the project proposes to demonstrate and how this new technology will aid or enhance the ability of Veterans and Service members to live in an adapted home. The following link has additional information regarding adapted homes: *https://www.va.gov/housing-assistance/disability-housing-grants/;* and

d. Each technology grant applicant is responsible for ensuring that the application addresses each of the scoring criteria listed in Section V(A) of this notice.

System for Award Management (SAM)

Each technology grant applicant, unless the applicant is an individual or Federal awarding agency that is excepted from these requirements under 2 CFR 25.110(b) or (c), or has an exception approved by VA under 2 CFR 25.110(d), is required to:

1. Be registered in SAM prior to submitting an application;

2. Provide a valid SAM Unique Entity Identifier number in the application; and

3. Continue to maintain an active SAM registration with current information at all times during which the technology grant applicant has an active Federal award or an application under consideration by VA.

VA will not make an award to an applicant until the applicant has complied with all applicable SAM requirements. If the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award and will use this determination as a basis for making the award to another applicant.

Submission Dates and Times

Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* to be transmitted to VA by 11:59 p.m. Eastern Standard Time on the application deadline, as specified in the **DATES** section of this announcement. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions by email, mail or fax will not be accepted.

Applications submitted through *www.Grants.gov* must be submitted by an individual registered with *www.Grants.gov* and authorized to sign applications for Federal assistance. For

more information and to complete the registration process, visit *www.Grants.gov.* Technology grant applicants are responsible for ensuring that the registration process does not hinder timely submission of the application.

It is the responsibility of grant applicants to ensure a complete application is submitted via *www.Grants.gov.* Applicants are encouraged to periodically review the ''Version History Tab'' of the funding opportunity announcement in *www.Grants.gov* to identify if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address that will allow *www.Grants.gov* to send the applicant an email message in the event this funding opportunity package is changed and/or republished on *www.Grants.gov* prior to the posted closing date.

Confidential Business Information

It is recommended that confidential business information (CBI) not be included in the application. However, if CBI is included in an application, applicants should clearly indicate which portion or portions of their application they are claiming as CBI. See 2 CFR 200.334–200.338 (addressing access to a non-Federal entity's records pertinent to a Federal award).

Intergovernmental Review

This section is not applicable to the SAHAT Grant Program.

Funding Restrictions

The SAHAT Grant Program does not allow reimbursement of pre-award costs.

Application Review Information

Each eligible proposal (based on the Section III threshold eligibility review) will be evaluated according to the criteria established by the Secretary and provided below in section A.

Scoring Criteria

The Secretary will score technology grant applications based on the scoring criteria listed below. As indicated in section I of this notice, the Secretary is placing the greatest emphasis on criteria 1 and 2. This emphasis does not establish new scoring criteria but is designed to assist technology grant applicants in understanding how scores will be weighted and ultimately considered in the final selection process. A technology grant application must receive a minimum aggregate score of 70 to receive further consideration for an award. Instructions for completion of the scoring criteria are listed on VA Form 26–0967a. This form is included in the application package materials on *www.Grants.gov.* The scoring criteria and maximum points are as follows:

1. A description of how the new assistive technology is innovative, to include an explanation of how it involves advancements in new-to-market technologies, new variations on existing technologies or both (up to 50 points);

2. An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals, to include whether and how the new assistive technology fits within a category of special emphasis for FY 2023, as explained in section I(D) of this notice (up to 50 points);

3. An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

4. A description of the new assistive technology's concept, size and scope (up to 30 points);

5. An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

6. An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or Veteran-owned business or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

Review and Selection Process

Eligible applications will be evaluated by a review panel comprising of five VA employees. The review panel will score applications using the scoring criteria provided in section V(A) and refer to the selecting official those applications that receive a minimum aggregate score of 70. In determining which applications to approve, the selecting official will take into account the review panel score, the priorities described in this Notice of Funding Opportunity, the governing statute, 38 U.S.C. 2108, the governing regulation, 38 CFR 36.4412 and the VA Financial Policy, Volume X Grants Management, Chapter 4 Grants Application and Award Process, *https://www.va.gov/finance/docs/VA-FinancialPolicyVolumeXChapter04.pdf.* VA will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws and relevant Executive guidance, except as noted.

Award Administration Information

Award Notices

Although subject to change, the SAHAT Grant Program Office expects to announce grant recipients on or about April 1, 2023. Prior to executing any funding agreement, VA will contact successful applicants, make known the amount of proposed funding and verify the applicant's desire to receive the funding. Any communication between the SAHAT Grant Program Office and successful applicants prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. This will begin the performance period. VA expects that the performance period should not last longer than 15 months. The award notice will be sent by U.S. mail or electronic means to the organization listed on the SF–424. All applicants will be notified by letter or email sent by U.S. mail or electronic means to the address listed on the SF–424.

Administrative and National Policy Requirements

This section is not applicable to the SAHAT Grant Program.

Reporting

VA places great emphasis on the responsibility and accountability of grantees. Grantees must agree to cooperate with any Federal evaluation of the program and provide the following:

1. Quarterly Progress Reports: These reports will be submitted electronically and outline how grant funds were used, describe program progress and describe any barriers and measurable outcomes. The format for quarterly reporting will be provided to grantees upon grant award.

2. Quarterly Financial Reports: These reports will be submitted electronically using the SF–425–Federal Financial Report.

3. Grantee Closeout Report: This final report will be submitted electronically and will detail the assistive technology developed. The grantee's Closeout

Report must be submitted to the SAHAT Grant Program Office not later than 120 days after the date the performance period ends.

Agency Contact(s)

For additional general information about this announcement contact the following program official: Oscar Hines (Program Manager), Specially Adapted Housing Program, *Oscar.Hines@va.gov*, 202–461–8316 (not a toll-free number).

Mailed correspondence, which should not include application material, should be sent to the following address: Loan Guaranty Service, VA Central Office, Attn: Oscar Hines (262), 810 Vermont Avenue NW, Washington, DC 20420.

All correspondence with VA concerning this announcement should reference the funding opportunity title and funding opportunity number listed at the top of this solicitation. Once the announcement deadline has passed, VA staff may not discuss this competition with applicants until the application review process has been completed.

Other Information

Section 2108 authorizes VA to provide grants for the development of new assistive technologies through September 30, 2024. Additional information related to the SAHAT Grant Program administered by LGY is available at: *http://www.benefits.va.gov/homeloans/sahat.asp.* The SAHAT Grant is not a Veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. The Secretary does not have a duty to assist technology grant applicants in obtaining a grant. Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System (PMS). All grant recipients should adhere to PMS user policies.

Notices of Funding Opportunity

In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200 and all applicable Federal laws and relevant Executive guidance, the Federal awarding agency will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with the Guidance for Grants and Agreements in title 2 of the CFR.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 21, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–04502 Filed 3–3–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that a meeting of the Veterans' Advisory Committee on Rehabilitation (hereinafter the Committee) will be held virtually on Wednesday, April 5, 2023, and Thursday, April 6, 2023, from 11:00 a.m. to 3:30 p.m. EST. The meeting sessions are open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA on the rehabilitation needs of Veterans with disabilities and on the administration of VA's Veteran rehabilitation programs. The Committee members will receive information on how VA assists Service members with transitioning to the civilian work force to include awareness of VA benefits, outreach efforts, and supported employment programs. In addition, the Committee will discuss and explore potential recommendations to be included in the next annual report.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to David Smith, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420, or at *VACOR.VBACO@va.gov.* In the communication, writers must identify themselves and state the organization, association, persons or persons they represent.

For any members of the public who wish to attend virtually, please use the Microsoft Teams Meeting link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTk4ZWM4NmYtZmEyMy00ZGFhLWI5MjQtYzFkYzA5Y2UyMWVm%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%2290b166f1-7f7c-45c8-bd26-9ea4d1f26b6f%22%7d* or call in (audio only) +1 872–701–0185, United States, Chicago, Phone Conference ID: 887–678–731#.

Dated: March 1, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

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Part II

Securities and Exchange Commission

17 CFR Parts 232, 240, and 275
Shortening the Securities Transaction Settlement Cycle; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 275

[Release Nos. 34–96930, IA–6239; File No. S7–05–22]

RIN 3235–AN02

Shortening the Securities Transaction Settlement Cycle

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date (''T+2'') to one business day after the trade date (''T+1''). In addition, the Commission is adopting new rules related to the processing of institutional trades by broker-dealers and certain clearing agencies. The Commission is also amending certain recordkeeping requirements applicable to registered investment advisers.

DATES:

Effective date: May 5, 2023.

Compliance date: The applicable compliance dates are discussed in Part VII of this release.

FOR FURTHER INFORMATION CONTACT: Matthew Lee, Assistant Director, Susan Petersen, Special Counsel, Andrew Shanbrom, Special Counsel, Jesse Capelle, Special Counsel, and Mary Ann Callahan, Senior Policy Advisor, at (202) 551–5710, Office of Clearance and Settlement, Division of Trading and Markets; Jennifer Porter, Senior Special Counsel, Amy Miller, Senior Counsel, and Holly H. Miller, Senior Financial Analyst, at (202) 551–6787, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: First, the Commission is amending paragraph (a) of 17 CFR 240.15c6–1 (''Rule 15c6–1'') under the Securities Exchange Act of 1934 (''Exchange Act'') to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1, as discussed in Part II.C.1.[1] The Commission is also amending paragraph (b) of Rule 15c6–1 to exclude security-based swaps from the requirements under paragraph (a) of the rule, and amending paragraph (c) of Rule 15c6–1 to shorten the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. Eastern Time (''ET'') from four business days after the trade date (''T+4'') to T+2, as discussed in Parts II.C.3 and II.C.4 respectively.

Second, to promote the completion of allocations, confirmations, and affirmations by the end of trade date for transactions between broker-dealers and their institutional customers, the Commission is adopting a new rule under the Exchange Act at 17 CFR 240.15c6–2 (''Rule 15c6–2''). Rule 15c6–2 requires a broker-dealer to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date. The specific requirements of the rule are discussed in Part III.C.

Third, the Commission is amending 17 CFR 275.204–2 (''Rule 204–2'') under the Investment Advisers Act of 1940 (''Advisers Act'') to require registered investment advisers to make and keep records of the allocations, confirmations, and affirmations for securities transactions subject to the requirements of Rule 15c6–2(a), as discussed in Part IV.C.

Fourth, the Commission is adopting a new rule under the Exchange Act at 17 CFR 240.17Ad–27 (''Rule 17Ad–27'') to require clearing agencies that provide a central matching service (''CMSPs'') to establish, implement, maintain, and enforce policies and procedures reasonably designed to facilitate straight-through processing (''STP'') and to file an annual report regarding progress with respect to STP. The specific requirements of the rule are discussed in Part V.C.

Fifth, the Commission is amending 17 CFR part 232 (''Regulation S–T'') to require that a CMSP submit the annual report required by Rule 17Ad–27 using the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') and tag the information in the report using the structured (*i.e.,* machine-readable) Inline eXtensible Business Reporting Language (''XBRL''). The Commission discusses this requirement in Part V.C.4.

Finally, the Commission solicited and received comments regarding the effect of shortening the settlement cycle on other Commission requirements, including 17 CFR 242.200 (''Regulation SHO''), 17 CFR 240.10b–10 (''Rule 10b–10''), the financial responsibility rules applicable to broker-dealers, requirements related to prospectus delivery and ''access versus delivery,'' and the impact on self-regulatory organization (''SRO'') rules and operations. These comments are discussed in Part VI.

Table of Contents

[1] *See* Part II.A (discussing the types of securities transactions that are currently covered by Rule 15c6–1(a)) and Part II.C.1 (discussing the types of securities transactions that will be covered by the rule following the rule changes being adopted in this release).

I. Introduction

Promoting the timely, orderly, and efficient settlement of securities transactions has been a longstanding Commission objective.[2] To advance this objective, the Commission first took steps in 1993 to establish a standard requiring the settlement of most securities transactions within three business days of trade date (''T+3''), shortening the prevailing practice at the time of settling securities transactions within five business days of trade date (''T+5'').[3] The Commission has on multiple occasions discussed how shortening the settlement cycle can protect investors, reduce risk in the financial system, and increase operational efficiency in the securities market.[4] In 2017, the Commission shortened the standard settlement cycle from T+3 to T+2.[5] Now, in part informed by episodes in 2020 and 2021 of increased market volatility that highlighted potential vulnerabilities in the U.S. securities market,[6] the Commission believes that shortening the settlement cycle from T+2 to T+1 can promote investor protection, reduce risk, and increase operational and capital efficiency.[7]

As discussed in the T+1 Proposing Release,[8] the Commission believes that substantial progress has been made toward identifying the technological and operational changes that are necessary to establish a T+1 settlement cycle, including the industry-level changes that would be necessary to transition from a T+2 standard to a T+1 standard settlement cycle. The Commission also discussed how additional regulatory steps were necessary to improve the processing of institutional transactions, advancing two other longstanding objectives shared by the Commission and the securities industry: the completion of trade allocations, confirmations, and affirmations on trade date (an objective often referred to as ''same-day affirmation'') and the straight-through processing of securities transactions.[9] Accordingly, the Commission proposed a combination of rule amendments and new rules to shorten the standard settlement cycle to T+1, establish new requirements for broker-dealers and investment advisers designed to advance the same-day affirmation objective, and to establish requirements for CMSPs to promote straight-through processing.[10]

The Commission received many comments in response to the T+1 Proposing Release.[11] Having considered the comments received, the Commission is adopting the proposed new rules and rule amendments with modifications, as discussed further below. Specifically, in Part II, the Commission discusses the comments received regarding the proposed amendments to Rule 15c6–1 under the Exchange Act, and

[2] *See* Exchange Act Release No. 94196, Investment Advisers Act Release No. 5957 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (''T+1 Proposing Release'').

[3] *See* Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891 (Oct. 13, 1993) (''T+3 Adopting Release'').

[4] *See, e.g.,* Exchange Act Release No. 31904 (Feb. 23, 1993) 58 FR 11806 (Mar. 1, 1993) (''T+3 Proposing Release''); T+3 Adopting Release, *supra* note 3; Exchange Act Release No. 78962 (Sept. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (''T+2 Proposing Release''); Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564, 15601 (Mar. 29, 2017) (''T+2 Adopting Release''); T+1 Proposing Release, *supra* note 2.

[5] *See* T+2 Adopting Release, *supra* note 4.

[6] *See* T+1 Proposing Release, *supra* note 2, at 10444 n.61.

[7] As stated in the T+1 Proposing Release, the Investor Advisory Committee recommended in 2015 that the Commission pursue T+1 (rather than T+2), noting that retail investors would significantly benefit from a T+1 standard settlement cycle. *See id.* at 10439 & nn.28–29.

[8] *See id.* at 10447.

[9] As discussed in the T+1 Proposing Release, the Commission uses ''straight-through processing,'' or ''STP,'' to refer generally to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *See id.* at 10458; *see also infra* note 323 and accompanying text.

[10] *See* T+1 Proposing Release, *supra* note 2, at 10436.

[11] Copies of all comment letters received by the Commission are available at *https://www.sec.gov/comments/s7-05-22/s70522.htm.*

modifications made in response to the comments. In Part III, the Commission discusses the comments received regarding proposed Rule 15c6–2 under the Exchange Act, and modifications made in response to the comments. In Part IV, the Commission discusses the comments received regarding the proposed amendment to Rule 204–2 under the Advisers Act, and modifications made in response to the comments. In Part V, the Commission discusses the comments received regarding proposed Rule 17Ad–27 under the Exchange Act, and modifications made in response to the comments. In Part VI, the Commission discusses the comments received regarding the effect of shortening the settlement cycle on other Commission requirements, including Regulation SHO, Rule 10b–10 under the Exchange Act, the financial responsibility rules applicable to broker-dealers, requirements related to prospectus delivery and ''access versus delivery,'' and the impact on SRO rules and operations.

II. Exchange Act Rule 15c6–1—Standard Settlement Cycle

A. Proposed Amendments to Rule 15c6–1

In the T+1 Proposing Release, the Commission proposed to amend Rule 15c6–1(a) to prohibit broker-dealers from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the first business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.[12] The proposed amendment to Rule 15c6–1(a) would shorten the length of the standard settlement cycle for securities transactions covered by the existing rule from T+2 to T+1.[13]

In addition to the proposed amendment to paragraph (a) of Rule 15c6–1, the Commission proposed to delete paragraph (c) of the rule,[14] which would, in conjunction with the proposed amendment to paragraph (a), establish a T+1 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET. However, the so-called ''override'' provisions in paragraphs (a) and (d) of Rule 15c6–1 would continue to allow contracts currently covered by paragraph (c) to provide for settlement on a timeframe other than T+1 if the parties expressly agree to a different settlement timeframe at the time of the transaction.

In addition to proposing to delete paragraph (c) of Rule 15c6–1, the Commission proposed conforming technical amendments to paragraphs (a), (b), and (d) of the rule. Specifically, the Commission proposed to delete all references to paragraph (c) of Rule 15c6–1 that currently appear in paragraphs (a), (b), and (d) of the rule.[15]

B. Comments

1. Length of Standard Settlement Cycle and Exchange Act Rule 15c6–1(a)

In response to the T+1 Proposing Release, the Commission received numerous comment letters supporting a shorter settlement cycle for securities transactions.[16] Many of these comment letters supported shortening the standard settlement cycle to T+1.[17] Several comment letters that supported the Commission's proposal to shorten the settlement cycle to T+1 also supported shortening the settlement cycle to ''T+0'' or instantaneous settlement.[18] Other comment letters

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[12] *See* T+1 Proposing Release, *supra* note 2, at 10447.

[13] As explained in the T+1 Proposing Release, existing Rule 15c6–1(a) covers contracts for the purchase or sale of all types of securities except for the excluded securities enumerated in paragraph (a)(1) of the rule. *See id.* at 10446. The definition of the term ''security'' in section 3(a)(10) of the Exchange Act covers, among others, equities, corporate bonds, unit investment trusts (''UITs''), mutual funds, exchange-traded funds (''ETFs''), American depository receipts (''ADRs''), security-based swaps, and options. *See id.* at 10446 n.83. Application of Rule 15c6–1(a) extends to the purchase and sale of securities issued by investment companies (including mutual funds), private-label mortgage-backed securities, and limited partnership interests that are listed on an exchange. *See id.* at 10446 nn.84–85.

[14] *See id.* at 10448–49.

[15] *See id.* at 10449.

[16] *See, e.g.,* letters from Jaime N. Calaf (Feb. 9, 2022) (''Calaf Letter''); James Kelley (Feb. 9, 2022) (''Kelley Letter''); Kyle (Feb. 9, 2022) (''Kyle 1 Letter''); Curtis Robinson (Feb. 9, 2022) (''Robinson 1 Letter''); Ryan, Business Owner (Feb. 9, 2022) (''Ryan 1 Letter''); L. Martin Stewart (Feb. 9, 2022) (''Stewart Letter''); Anthony LaBree (Feb. 10, 2022) (''LaBree Letter''); Nicolas Zach (Feb. 13, 2022) (''Zach Letter''); Richard Stauts (Feb. 14, 2022) (''Stauts Letter''); PressPage Entertainment Inc. (Feb. 15, 2022) (''PressPage Letter''); Peter Duggan, President, Securities Transfer Association (Apr. 1, 2022), at 2 (''STA Letter''); Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative (Apr. 4, 2022), at 1 (''MMI Letter''); Hope Jarkowski, General Counsel, NYSE Group, Inc. (Apr. 6, 2022), at 1 (''NYSE Letter''); Keith Evans, Executive Director, Canadian Capital Markets Association (Apr. 9, 2022), at 1 (''CCMA April Letter''); Steven Wager, Chair, Americas Focus Committee, Association of Global Custodians (Apr. 11, 2022), at 3 (''AGC April Letter''); Stephen Hall, Legal Director and Securities Specialist, and Jason Grimes, Senior Counsel, Better Markets, Inc. (Apr. 11, 2022), at 1 (''Better Markets Letter''); Paul Conn, President, Global Capital Markets, and Claire Corney, Senior Managing Director, Regulatory & Market Initiatives, Global Capital Markets, Computershare Limited (Apr. 11, 2022), at 1 (''Computershare Letter''); Birgitta Siegel, Esq., Adjunct Professor of Law, Cornell Law School Securities Law Clinic (Apr. 11, 2022), at 1 (''Cornell Law Letter''); Murray Pozmanter, Managing Director, Head of Clearing Agency Services & Global Business Operations, The Depository Trust and Clearing Corporation (Apr. 11, 2022), at 2 (''DTCC Letter''); Joanna Mallers, Secretary, FIA Principal Traders Group (Apr. 11, 2022), at 1 (''FIA PTG Letter''); Robert Adams, Chief Operations Officer, National Financial Services LLC (Apr. 11, 2022), at 1 (''Fidelity Letter''); Gail C. Bernstein, General Counsel, Investment Adviser Association (Apr. 11, 2022), at 1 (''IAA April Letter''); Susan Olson, General Counsel, and Joanne Kane, Chief Industry Operations Officer, Investment Company Institute (Apr. 11, 2022), at 1 (''ICI Letter''); Jack Rando, Managing Director, The Investment Industry Association of Canada (Apr. 11, 2022), at 1 (''IIAC Letter''); Jennifer Han, Executive Vice President, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association (Apr. 11, 2022), at 1 (''MFA Letter''); Joseph Kamnik, Chief Regulatory Counsel, The Options Clearing Corporation (Apr. 11, 2022), at 1 (''OCC Letter''); Fran Garritt, Director, Securities Lending & Market Risk, and Mark Whipple, Chairman, Committee on Securities Lending, Securities Lending Council of the Risk Management Association (Apr. 11, 2022), at 3 (''RMA Letter''); Joseph Barry, Senior Vice President and Global Head of Regulatory, Industry and Government Affairs, State Street Corporation (Apr. 11, 2022), at 3 (''State Street Letter''); Robert McBey, Chief Executive Officer, Wilson-Davis & Co., Inc. (Apr. 14, 2022), at 1 (''Wilson-Davis Letter''); Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (Apr. 11, 2022), at 1 (''Virtu Financial Letter''); Christopher A. Iacovella, Chief Executive Officer, American Securities Association (Apr. 12, 2022), at 1 (''ASA Letter''); Thomas Price, Managing Director, and Lindsey Weber Keljo, Head—Asset Management Group, Securities Industry and Financial Markets Association (Apr. 13, 2022), at 1–2 (''SIFMA April Letter'').

[17] *See, e.g.,* AGC April Letter, *supra* note 16, at 3; ASA Letter, *supra* note 16, at 1; letter from Jaiden Baker (Feb. 19, 2022) (''Baker Letter''); Better Markets Letter, *supra* note 16, at 1; CCMA April Letter, *supra* note 16, at 1; Computershare Letter, *supra* note 16, at 1; Cornell Law Letter, *supra* note 16, at 2; DTCC Letter, *supra* note 16, at 2; FIA PTG Letter, *supra* note 16, at 1; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1; IIAC Letter, *supra* note16, at 1; Kyle 1 Letter, *supra* note 16, at 1; LaBree Letter, *supra* note 16, at 1; MFA Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 1; NYSE Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; PressPage Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; Robinson 1 Letter, *supra* note 16, at 1; Ryan 1 Letter, *supra* note 16, at 1; SIFMA April Letter, *supra* note 16, at 3; STA Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 3; Stauts Letter, *supra* note 16, at 1; Stewart Letter, *supra* note 16, at 1; Wilson-Davis Letter, *supra* note 16, at 1; letter from Rebecca Womack (Feb. 18, 2022) (''Womack Letter''); *Virtu Financial Letter, supra note* 16, at 3; Zach Letter, *supra* note 16, at 1.

[18] *See, e.g.,* Calaf Letter, *supra* note 16; letter from Degen Mahdere (Feb. 17, 2022) (''Mahdere Letter''); letter from Adam Rathbone (Feb. 17, 2022) (''Rathbone Letter''); letter from Hunter Gage Seeton (Feb. 18, 2022) (''Seeton Letter''); letter from Sam Oakes (Feb. 19, 2022) (''Oakes Letter''); letter from Matthew Risse (Feb. 19, 2022) (''Risse Letter''); letter from Ryan Webster (Oct. 31, 2022) (''Webster Letter''). Several of the comment letters referred to ''T+0'' without explaining that term. However, the T+1 Proposing Release defines T+0 as settlement no later than the end of trade date. *See* T+1 Proposing Release, *supra* note 2, at 10436, 10438.

were silent as to the Commission's proposal to shorten the settlement cycle to T+1, but expressed the view that a T+0 settlement cycle should be implemented either immediately or as soon as possible.[19]

Commenters supporting the Commission's proposal to shorten the standard settlement cycle to T+1 cited a number of benefits that a T+1 settlement cycle would deliver to market participants. For example, comment letters supporting a move to T+1 stated that shortening the settlement cycle to T+1 would result in reductions to existing levels of risk to central counterparties (''CCPs'') and market participants (including credit, market and liquidity risk),[20] lower margin requirements,[21] improved capital liquidity,[22] improvements to post-trade processing and operational efficiency,[23] increased financial stability,[24] and reduced systemic risk in the financial system.[25]

In addition, several comment letters stated that shortening the settlement cycle to T+1 would benefit retail investors.[26] For example, one commenter stated that retail investors would benefit from a move to T+1 through increased certainty, safety, and security in the financial system; access to the proceeds, or purchases, of their securities transactions a day earlier; and aligning the settlement cycles for ETF transactions (which now settle on T+2) with the settlement cycle for mutual funds (which typically settle on T+1).[27] Another commenter similarly stated that investors would benefit from earlier access to the proceeds of their securities transactions if the settlement cycle is shortened to T+1.[28]

The Commission also received comment letters that raised concerns regarding the Commission's proposal to shorten the standard settlement cycle to T+1.[29] These commenters, some of which were supportive of shortening the settlement cycle as a general matter, raised concerns about the prospective impact of mismatched settlement cycles across global markets that would result if the settlement cycle in the U.S. is shortened to T+1 without global coordination and harmonization of settlement cycles.[30] For example, a comment letter submitted by an industry association representing the alternative investment industry stated that the T+1 Proposing Release ''raises considerable risks for asset managers with primary or significant exposure to markets that will remain at T+2.'' [31] The comment letter further stated that ''[i]n absence of further global coordination, the resulting market misalignment from the move to T+1 poses a number of harmful unintended consequences to these asset managers, their counterparties and overall market health and stability.'' [32] The commenter's letter references specifically ''misalignment concerns'' relating to FX settlement risk,[33] international banking and coordination issues, and collateral/liquidity risk.[34]

With respect to FX settlement risk, the commenter stated that accelerating the U.S. settlement cycle to T+1 raises the risk that transaction funding dependent on FX ''may not occur on time.'' [35] The commenter further stated that alternative sources of funding for U.S. trades on T+1 may therefore need to be in place, which may increase costs and create allocation inefficiencies that may dissuade participation in U.S. markets.[36]

[19] *See, e.g.,* letter from Mark C. (Feb. 19, 2022) (''Mark C. Letter''); letter from Saul Nevarez (Feb. 19, 2022) (''Nevarez Letter''); letter from Clinton Lawler (Feb. 19, 2022) (''Lawler Letter''); letter from Alex McKay (Feb. 19, 2022) (''McKay Letter'').

[20] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1, 3; MFA Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3; SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[21] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[22] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[23] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; IAA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; State Street Letter, *supra* note 16, at 4.

[24] *See, e.g.,* ICI Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2.

[25] *See, e.g.,* Fidelity Letter, *supra* note 16, at 2; MFA Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3;

[26] *See, e.g.,* Better Markets Letter, *supra* note 16, at 2–3; Fidelity Letter, supra note 16, at 2; IIAC Letter, *supra* note 16, at 1; LaBree Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; Robinson 1 Letter, *supra* note 16, at 1; Ryan 1 Letter, *supra* note 16, at 1; Stauts Letter, *supra* note 16, at 1; letter from Tate Winter (Feb. 17, 2022) (''Winter Letter'').

[27] *See* Fidelity Letter, *supra* note 16, at 2; *see also* ICI Letter, *supra* note 16, at 3 (stating that a T+1 settlement cycle would enhance funds' cash and liquidity management; given that fund shares typically settle on a T+1 basis, a shorter settlement cycle would help align the settlement of a fund's portfolio securities and the settlement of its shares).

[28] *See* Cornell Law Letter, *supra* note 16, at 3 (''If [the Commission's T+1 proposal] were adopted, buyers and sellers would have access to their proceeds an entire day earlier relative to the T+2 settlement cycle. If the public comments submitted to date are any indication, this is of paramount concern to the lay investor.'').

[29] *See, e.g.,* letters from Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (Apr. 11, 2022), at 2 (''AIMA Letter'') (commending the Commission's intended efforts to reduce risk in the U.S. settlement cycle and improve efficiency in post-trade processing); Kristin Swenton Hochstein et al., International Securities Association for Institutional Trade Communication (Apr. 8, 2022), at 2–7 (''ISITC Letter'') (not advocating for or against shortening the U.S. settlement cycle to T+1, but identifying certain challenges associated with moving to T+1); Scott Pintoff, General Counsel, MarketAxess Holdings Inc. (Apr. 11, 2022), at 1 (''MarketAxess Letter'') (generally favoring a shortening of the standard settlement cycle for most bond transactions from T+2 to T+1); State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 2–3.

[30] Several of the comment letters that raised concerns regarding the Commission's proposal to shorten the settlement cycle to T+1 also raised concerns regarding proposed Rule 15c6–2. Those comments are discussed separately in Part III.B below.

[31] AIMA Letter, *supra* note 29, at 2. The AIMA Letter also cites to a letter AIMA submitted to Commission staff on October 27, 2021, which further details the concerns raised in the AIMA Letter. AIMA's 2021 submission to Commission staff was resubmitted to the Commission as an Annex to the AIMA Letter.

[32] *Id.*

[33] The comment letters that use the term ''FX'' do not define the term, but ''FX'' is commonly used to refer to foreign currency exchange. Market participants often rely on FX trades executed in the ''spot'' markets in order to fund securities transactions in the U.S. markets that settle in U.S. dollars, and the settlement cycle for spot FX transactions is typically T+2. However, spot transactions in certain FX pairs (*e.g.,* U.S. dollars vs. Canadian dollars) settle on T+1.

[34] AIMA Letter, *supra* note 29, at 5–6. The commenter explained its concerns relating to international banking and coordination issues by stating that ''the rigid deadlines of banking systems pose a significant risk, as do simple time zone or calendar differences that otherwise can be accommodated by a T+2 settlement cycle.'' *Id.* at 5. The commenter further stated that foreign banking deadlines and cutoff times for transaction processing in related markets must be carefully re-examined to ensure activity can be harmonized in an accelerated U.S. settlement framework. *Id.*

[35] *Id.* The commenter further stated that settlement of FX transactions generally occurs on T+2, ''although the period of irrevocability—between the unilateral cancellation deadline for the sold currency and actual receipt of the bought currency—can extend well beyond T+1.'' *Id.*

[36] *Id.* The commenter further stated that ''unilateral cancelation deadlines may need to be considered'' for FX transactions. *Id.* The length of such deadlines may impact when an FX transaction can be settled, in turn affecting the time it may take to secure funding for a securities transaction. The T+1 Report also states that such unilateral cancelation deadlines may need to be considered, and discusses how these deadlines may impact asset managers if the settlement cycle for securities transactions is shortened to T+1. *See* T+1 Report, *infra* note 61, at 17. The term ''unilateral cancelation deadline'' generally refers to the point in time after which a bank is no longer guaranteed that it can recall, rescind or cancel (with certainty) a previously submitted payment instruction. This deadline varies depending on the currency pair being settled, correspondent payment system practices, and operational, service and legal arrangements. *See* Bank for International Settlements, Supervisory Guidance for Managing Risks Associated with the Settlement of Foreign Exchange Transactions (Feb. 2013), *available at https://www.bis.org/publ/bcbs241.pdf. See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

With respect to the commenter's concerns regarding collateral and liquidity risks, the commenter stated that the above-described FX and coordination issues threaten asset managers' ability to ensure funding is available in time to settle their U.S. trades on T+1.[37] According to the commenter, uncertainty regarding collateral for settlement may mean that foreign asset managers would need to redeem money market funds to meet their financing needs, or forego transacting in U.S. markets in order to comply with the accelerated settlement requirements.[38] Ultimately, the commenter stated, trade financing issues will lead to both significantly lower trading volume and lower overall liquidity, which pose a very real risk to overall market health and stability.[39]

Another commenter was concerned that there may not be sufficient time for investment advisers to match foreign currency amounts to settle all trades on T+1, citing various factors that would make it costly and difficult for investment advisers to execute FX after the U.S. market close.[40] This commenter also stated that because FX transactions largely settle on a T+2 basis, market participants that seek to fund a cross-border securities transaction with the proceeds of an FX transaction would be required to settle the securities transaction before the proceeds of the FX transaction become available and pre-fund these securities transactions, which would potentially adversely impact client performance and increase operating and settlement risk for advisers. The commenter said that while both domestic and internationally based investment advisers would be impacted by these issues, non-U.S.-based investment advisers would face additional expenses because they would need to set up an FX trading and settlement presence in the U.S., or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[41]

Another commenter that operates a broker-dealer and an electronic trading platform for corporate bonds stated that it had ''serious reservations regarding the impact the proposed amendments to Rule 15c6–1(a) and Rule 15c6–2 will have on cross border trading unless, and until, other global financial markets also shorten their settlement cycle.'' [42] Specifically, the commenter stated that if the U.S. settlement cycle is shortened to T+1 while other major global financial centers remain on a T+2 settlement cycle, ''there will be increased operational cost and significant settlement risks associated with multi-leg cross border transactions.'' [43]

The commenter further stated that it expects mismatched settlement cycles would result in increased financing costs associated with transactions in which a U.S. market participant is selling to a cross-border participant because ''we will be forced to receive (and pay for) a securities position on T+1 for the U.S. leg, but generally be unable to onward deliver the position on the foreign leg until T+2.'' [44] In this scenario, the commenter stated that it would need to fund the position until the next settlement cycle.[45]

Additionally, the commenter stated its expectation that there will be a significant number of settlement fails when the U.S. participant is buying bonds and the cross-border participant is unable to deliver the bonds until T+2.[46] The commenter further argued that if the Commission's T+1 proposal is adopted and other financial markets do not move in lock-step, the increase in financing costs and settlement fails in connection with cross-border transactions may force broker-dealers to decrease or cease offering cross-border services to their clients.[47] Lastly, the commenter argued that any decrease or cessation of cross-border trading ultimately will reduce liquidity for U.S. investors.[48] For these reasons, the commenter encouraged the Commission to work with international regulators to coordinate a move to T+1 settlement on a global basis if possible.[49]

Another commenter stated that there may not be sufficient time for investment advisers to match foreign currency amounts to settle all trades on T+1.[50] In particular the comment highlighted the lack of time between the closure of the equity markets (at 4:00 p.m. ET in the U.S.) and the time when U.S.-based FX trading desks close for the evening (usually an hour or so later).[51] The commenter also discussed the reasons it believed that ''Far East'' trading desks may not seamlessly take over after the close of U.S.-based FX trading desks.[52] According to the commenter, these issues may impact both domestic and internationally based investment advisers.[53] However, in the commenter's view, non-U.S. based investment advisers will face additional expenses, as they will either be forced to set up an FX trading and settlement presence in North America (or Asia) or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[54]

Finally, the commenter suggested certain ''options'' for actions that could be taken to reduce disruption in the FX markets. While recognizing that some of these options would be ''troublesome to implement,'' the commenter stated that two would be the most effective in alleviating the commenter's concerns.[55] First, the commenter suggested that appropriate market authorities mandate a change in ''the official equity trading day'' for U.S. markets to close one hour earlier, at 3:00 p.m. rather than 4:00 p.m. ET, which would provide firms more time to match trades and ensure the settlement FX is in place for the following day, without negatively impacting liquidity and trading volume.[56] Second, the commenter stated that the Commission could allow for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements ''without [such arrangements] breaching an investment adviser's best execution obligation.'' [57]

In the proposing release, the Commission asked commenters whether efforts to shorten the standard settlement cycle to T+1 is a logical step on the path to T+0 settlement, or would moving to a T+1 standard settlement cycle require investments or processes that would be outdated or unnecessary

[37] AIMA Letter, *supra* note 29, at 5.

[38] *Id.*

[39] *Id.*

[40] *See* IAA October Letter, *infra* note 222, at 3 (observing that there are circumstances in which a U.S.-based FX trading desk will switch over to its Asia-based FX trading desk upon the U.S. market close to provide ongoing liquidity, but not on Friday evenings, and certain asset owners and managers, including Sovereign Wealth Funds, only trade from their country of domicile).

[41] *Id.* at 4 (suggesting certain actions the Commission could take to reduce disruption in FX markets, such as by (i) working with other regulators and market participants to support the move to T+1 by, among other things, modifying the FX and equity trading day(s) in the U.S., and (ii) ''allow[ing] for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without it breaching an investment adviser's best execution obligation'').

[42] MarketAxess Letter, *supra* note 29, at 1.

[43] *Id.* at 2.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] Letter from Suzanne Quinn, Head of North America Compliance, Ballie Gifford Overseas Limited (Nov. 17, 2022), at 1 (''Ballie Gifford Letter'').

[51] *Id.*

[52] *Id.* at 1–2.

[53] *Id.* at 2.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.; see also supra* note 41 and accompanying text (discussing the same, including other related recommendations from the IAA).

in a T+0 environment.[58] Although no commenters discussed whether moving to a T+1 standard settlement cycle would require investments or processes that would be outdated or unnecessary in a T+0 environment, as discussed below, the Commission received numerous comments relating to T+0 settlement.

Several of the commenters that supported moving to a T+1 settlement cycle also stated that moving to a T+0 settlement cycle, or instantaneous settlement, is either not achievable or not practical in the near term.[59] These commenters cited several challenges associated with a prospective move to a T+0 settlement cycle,[60] including in the case of several comment letters, many of the same challenges that were cited in the ''T+1 Report,'' which the Commission discussed in the T+1 Proposing Release.[61] For example, one commenter stated that moving to T+0 ''would require the redesign of many securities processing functions, including [i]nstitutional [t]rade [p]rocessing, ETFs processing, options, margin investing, securities lending, FX markets, and global settlements across jurisdictions to meet the regulatory, operational, and contractual requirements.'' [62] Another commenter stated that:

> [I]mplementing T+0 as the required standard settlement cycle across the industry remains a significant undertaking that would require foundational changes to the way securities trade and settle today. Moreover, moving the entire industry to a T+0 standard settlement cycle would necessitate significant changes in industry conventions and major investments in automating processes and technology that will greatly exceed similar investments needed for T+1.[63]

Another commenter argued that moving to T+0 would require a ''rewrite'' of not only the current clearing and settlement infrastructure, but also the associated banking, securities custodian, and money market systems that are critical components of the clearing and settlement ecosystem.[64] This commenter further stated that moving to T+0 settlement would potentially require implementation of real-time currency movements during hours of the day at which such processes are not feasible.[65] In particular, the commenter argued, ''[n]ot only would this require major system upgrades, but as critical components of the settlement process, banks, wire systems, custodians, lenders, and money market funds, along with related staff, would need to be available well into the evening.'' [66]

Another commenter stated that T+0 settlement would present logistical concerns around borrowing and lending and would likely introduce challenges for batch processing.[67] More specifically, this commenter stated that while it is possible that trades could be netted throughout the day, it is unlikely that batch processing could capture all trades by the market close, and such netting could lead to multiple intraday margin calls by clearing agencies.[68] The same commenter stated that in a T+0 settlement environment it would be very difficult for investment advisers to process real-time trade allocations.[69] Additionally, the commenter argued that prime brokers would be required to overhaul their processes and technology to capture allocations, calculate margin requirements, ensure margin accuracy, and facilitate trade reporting and disaffirmations.[70] Finally, the commenter stated that moving to T+0 would require ''complete dematerialization of securities.'' [71]

Other commenters argued that any move to shorten the settlement cycle to T+0 should be considered only after a successful transition to T+1.[72] One such commenter stated that once the industry has established the full scope of work required for T+1 and is actively progressing towards implementation, the industry should conduct a ''full review'' to identify the scope of changes that are needed to effectuate a move to a T+0 standard settlement cycle.[73]

Another commenter stated that moving to a T+0 settlement cycle would require significant industry and regulatory discussion, and technological upgrades and change, as well as the creation and implementation of new operating models and processes in many instances,[74] but believed that the transition to a T+1 settlement cycle would be a valuable step towards T+0, as the industry would learn lessons that can be used to evaluate if and how a T+0 settlement cycle can be achieved in the longer term.[75] However, according to the commenter, industry discussions on implementing T+0 at this time ''may inadvertently divert resources from focusing on the requirements and issues related to delivering T+1 in the near future.'' [76]

Those commenters supporting an immediate move to T+0 or instantaneous settlement neither explained how either T+0 settlement or instantaneous settlement could be implemented, nor addressed the impediments to T+0 settlement that were cited by several of the commenters who argued that T+0 settlement is not achievable or not practical in the near term. Nor did the comment letters supporting a T+0 settlement cycle or

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[58] *See* T+1 Proposing Release, *supra* note 2, at 10450.

[59] *See, e.g.,* DTCC Letter, *supra* note 16, at 6 (''[W]e do not believe the industry is currently ready to move to a T+0 standard settlement cycle . . .''); FIA PTG Letter, *supra* note 16, at 1–2; MMI Letter, *supra* note 16, at 3 (expressing commenter's concern that a move to T+0 would be potentially infeasible in the short term); NYSE Group Letter, *supra* note 16, at 2 (expressing commenter's view that T+0 settlement cycle is not practical in the near term); OCC Letter, *supra* note 16, at 4 (''OCC agrees with the consensus view reflected in [the T+1 Report] that same-day settlement is not achievable in the short-term, and that moving towards shortening the settlement cycle to T+0 would require an overhaul of the U.S. clearing and settlement infrastructure.''); SIFMA April Letter, *supra* note 16, at 15–20 (expressing commenter's view that T+0 settlement is not practical in the near term); Virtu Financial Letter, *supra* note 16, at 3–4 (''T+0 [settlement] is not feasible or attainable at this time.'').

[60] *See, e.g.,* DTCC Letter, *supra* note 16, at 5; NYSE Group Letter, *supra* note 16, at 2 (''T+0 settlement cycle would pose significant challenges to the industry, including eliminating the benefits of netting for settling trades, requiring that every transaction be funded instantly and individually, and additional complexities for foreign investors, options, ETFs and futures.''); SIFMA April Letter, *supra* note 16, at 16 (describing numerous challenges associated with moving to T+0 settlement); Virtu Financial Letter, *supra* note 16, at 3–4 (describing various challenges associated with moving to T+0 settlement); *see also* State Street Letter, *supra* note 16, at 5–10 (providing high-level observations on the implications of same-day settlement for various operational processes and investment products which are central to the custody bank business model).

[61] *See* T+1 Proposing Release, *supra* note 2, at 10438, 10445 (citing to Deloitte & Touche LLP, the Depository Trust and Clearing Corporation, the Investment Company Institute, and Securities Industry and Financial Markets Association, Accelerating the U.S. Securities Settlement Cycle to T+1 (Dec. 1, 2021) (''T+1 Report''), *https://www.sifma.org/wp-content/uploads/2021/12/Accelerating-the-U.S.-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf*).

[62] SIFMA April Letter, *supra* note 16, at 16 (quoting T+1 Report, *supra* note 61).

[63] DTCC Letter, *supra* note 16, at 5.

[64] FIA PTG Letter, *supra* note 16, at 1.

[65] *Id.*

[66] *Id.* at 1–2.

[67] *See* Virtu Financial Letter, *supra* note 16, at 3–4.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See, e.g.,* AGC April Letter, *supra* note 16, at 3–4; DTCC Letter, *supra* note 16, at 5; *see also* letter from Isabelle S. Corbett, Global Head of Government Relations, R3 LLC, at 3 (''R3 Letter'') (supporting the view that ''T+0 does not make sense today,'' and stating that ''further compression from T+1 should continue to be considered''); ASA Letter, *supra* note 16, at 3 (arguing that the market is not prepared to move to T+0, and urging the Commission to continue to study and solicit public feedback on moving to T+0 rather than using the Commission's T+1 proposal as a vehicle to accelerate that shift).

[73] *See, e.g.,* DTCC Letter, *supra* note 16, at 5.

[74] AGC April Letter, *supra* note 16, at 3.

[75] *See id.* at 3–4.

[76] *Id.* at 4.

instantaneous settlement explain how a settlement cycle shorter than T+1 would reduce overall levels of risk in the clearance and settlement system. These letters generally consisted of declaratory statements to the effect that either T+0 or instantaneous settlement is achievable now and should be implemented without delay, while offering no factual support for these views.[77]

2. Securities Excluded From Requirements Under Exchange Act Rule 15c6–1

The Commission also received comment letters discussing certain types of securities that the respective commenters believed should be excluded from the requirements under Exchange Act Rule 15c6–1, whether through amendment to the text of the rule or via separate exemptive relief. Two of these commenters discussed whether Rule 15c6–1 should apply to security-based swap transactions[78] and both expressed the view that the rule should not apply to such transactions.[79] One of the two commenters stated that Rule 15c6–1 is ''inapt'' with respect to security-based swap transactions, which are ''generally bilateral and executory in nature,'' meaning that there are numerous terms that the parties typically agree to fulfill at later dates.[80] This commenter further stated that ''the [Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')] mandated numerous requirements for security-based swaps that address the very credit, market and liquidity risks that, for broker-dealer transactions in securities, are addressed by the shortening of the settlement cycle from T+2 to T+1.'' [81] Because security-based swaps are already subject to a comprehensive regulatory regime, the commenter stated, these securities should not be subject to further regulation under the Commission's proposal.[82]

The same commenter highlighted certain ''key differences'' between security-based swaps and other types of securities.[83] In particular, the commenter stated that for other types of securities, such as equity or debt, settlement occurs when the buyer receives the security purchased and the seller receives cash equaling the value of the security sold.[84] For security-based swaps, however, a final net payment is paid by one party to the other at a future point in time to which the parties have contractually agreed.[85] For all of these reasons, the commenter argued, the Commission should provide an express exclusion for security-based swaps, and ''at the very least, any doubt caused by the reference in the [T+1 Proposing release] to security-based swaps should be resolved by [the Commission] clarifying that counterparties to such instruments, who generally agree to specific payment and settlement terms in writing, benefit from the existing override provision in [Rule 15c6–1(a)].'' [86]

The other comment letter discussing the prospective application of Rule 15c6–1 to security-based swaps argued that the rule ''should not apply to security-based swap transactions effected by a 'security-based swap dealer,' which is dually registered as a broker-dealer.'' [87] In support of this argument, the commenter stated that security-based swap transactions are typically bilateral transactions between sophisticated counterparties who deal directly with each other, and which are subject to unique capital, margin, and segregation requirements.[88] Thus, according to the commenter, ''there is no principled basis to apply Rule 15c6–1 to security-based swap transactions solely for the reason that a security-based swap dealer is also registered as a broker-dealer.'' [89] Instead, the commenter argued, the Commission should modify the rule to exempt, or further exemptive relief should be provided for, security-based swaps ''as noted in the [T+1 Proposing Release].'' [90]

3. Proposed Deletion of Rule 15c6–1(c)

The Commission received one comment letter responding to the proposed deletion of paragraph (c) of Rule 15c6–1, and the commenter recommended that paragraph (c) be retained in a modified form, rather than being deleted.[91] Specifically, the commenter recommended that paragraph (c) be retained but modified to allow parties to settle on T+2, rather than T+1, in the case of a firm commitment underwriting.[92] Under the commenter's recommended modification, Rule 15c6–1(c) would provide a ''fallback'' to parties without an explicit agreement at the time of the transaction to settle on T+2 if unforeseen circumstances interfere with either party's ability to conform to a T+1 settlement date.[93] The commenter also supported the continued retention of paragraph (d) of Rule 15c6–1, stating that paragraph (d) is ''critically important for debt and preferred equity offerings.'' [94]

In support of the view that the Commission should retain a modified version of Rule 15c6–1(c), the commenter stated that reliance on paragraphs (a) and (d) would be insufficient to prevent transactions for securities priced after 4:30 p.m. ET from failing to settle.[95] Specifically, the commenter stated that while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date they must reach that agreement at the time of the transaction.[96]

The commenter further stated that, ''particularly in the context of common stock offerings, where an extended settlement is extremely difficult to implement, if specific issues are identified prior to pricing of the offering, in practically all such instances, the pricing of the offering would be delayed.'' [97] According to the commenter, the parties are ''by definition'' unable to foresee ''unanticipated issues'' prior to pricing of the offering.[98]

[77] *See, e.g.,* Calaf Letter, *supra* note 16; Clemens Letter, *supra* note 18; Mahdere Letter, *supra* note 18; Nevarez Letter, *supra* note 19; Oakes Letter, *supra* note 18; Rathbone Letter, *supra* note 18; Seeton Letter, *supra* note 18.

[78] *See* MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 11–12. As noted in the T+1 Proposing Release, the Commission previously issued an order that exempted security-based swaps from the requirements under Rule 15c6–1, and subsequently extended that exemptive relief on several occasions, but the exemptive relief that previously covered compliance with Rule 15c6–1 expired in 2020. *See* T+1 Proposing Release, *supra* note 2, at 10446 n.83.

[79] *See* MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 11–12. In addition to the comment letters discussing the prospective application of Rule 15c6–1 to security-based swap transactions, the Commission received a small number of comment letters that recommended the continuation and/or expansion of certain regulatory relief from Rule 15c6–1 previously provided by the Commission in certain exemptive orders. These comments are discussed in Part II.B.5, which follows discussion of the comment letters that relate more directly to the text of Rule 15c6–1.

[80] SIFMA April Letter, *supra* note 16, at 11.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] MFA Letter, *supra* note 16, at 2.

[88] *See id.*

[89] *Id.*

[90] *See id.; see also id.* at n.11 (citing to T+1 Proposing Release, *supra* note 2, at 10446 n.83).

[91] *See* SIFMA April Letter, *supra* note 16, at 9–11.

[92] *See id.* at 10.

[93] *Id.* at 10–11.

[94] *Id.* at 11.

[95] *See id.* at 10.

[96] *See id.*

[97] *Id.*

[98] *Id.*

Thus, the commenter stated that paragraphs (a) and (d) of Rule 15c6–1 would not allow parties to agree to a longer settlement cycle when circumstances unforeseen at the time of the pricing of the transaction arise that prevent settlement on T+1.[99] For example, according to the commenter, ''it is not unusual to face unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties.'' [100] Finally, in support of the commenter's belief that eliminating paragraph (c), together with a move to T+1, would lead to increased failures to settle trades with respect to firm commitment underwritings, the commenter cited the limited timeframe that would be available ''to resolve issues'' prior to settlement on T+1.[101]

4. Retention of Exchange Act Rule 15c6–1(d)

Paragraph (d) of Rule 15c6–1 provides that for purposes of paragraphs (a) and (c) of the rule, parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.[102] The proposed rule text did not make any changes to paragraph (d) of Rule 15c6–1 other than technical conforming changes that would have been necessary if the Commission adopted the proposed deletion of paragraph (c) of the rule.[103]

The Commission received one comment letter supporting the retention of paragraph (d) because, according to the commenter, it is ''critically important for debt and preferred equity offerings.'' [104] However the comment letter did not further explain why paragraph (d) is important for such offerings.

5. Exemptive Orders Under Exchange Act Rule 15c6–1(b)

The T+1 Proposing Release stated that, pursuant to Rule 15c6–1(b), the Commission has granted certain exemptions from the requirements under Rule 15c6–1, including an exemption for securities that do not have facilities for transfer or delivery in the U.S. [105] The T+1 Proposing Release requested public comment on whether the conditions set forth in the Commission's exemptive order for securities traded outside the U.S. are still appropriate, and whether the exemption should be modified.[106] The Commission received several comment letters discussing whether the Commission should continue the exemption for foreign securities if the settlement cycle were shortened to T+1, and all of these commenters urged the Commission to retain the exemption, and/or recommended that the Commission make certain modifications to the exemption that would expand the scope of the exemption.[107]

One commenter recommended that the Commission retain this exemption and explicitly state in the adopting release that the permissible settlement period for securities traded outside of the U.S. should be defined by the local market.[108] The commenter stated that settling trades with different time zones is already a difficult process and accelerating the settlement cycle for these securities would make cross-border transactions even more challenging.[109]

Another commenter stated that the exemption for foreign securities should be retained and modified to address ''certain product misalignment matters.'' [110] This commenter observed that in many non-U.S. markets today, trades settle on a T+2 basis.[111] Therefore, the commenter stated, unless those markets transition to a T+1 settlement timeframe when the U.S. moves to a T+1 cycle, U.S. broker-dealers will not be able to comply with Rule 15c6–1 for trades in foreign securities.[112]

Additionally, according to the commenter, retaining the exemption for transactions in foreign securities in non-U.S. markets would not address the misalignment of settlement cycles between U.S. securities and non-U.S. securities that impacts U.S. securities that are exchangeable for a foreign security or a basket of foreign securities.[113] The commenter highlighted in particular ADRs, and ETFs with an underlying basket of foreign securities, which according to the commenter, illustrate this misalignment.[114]

With respect to ADRs, the commenter stated that market makers and other market participants may purchase foreign shares and sell related ADRs in the U.S. on the same trading day, and thus timely settle the sale of the ADRs using the newly created ADRs.[115] According to the commenter, this type of trade will not be possible if the underlying foreign shares settle on T+2 and the related ADR is required to settle on T+1.[116] The result, the commenter stated, is likely to be wider bid-ask spreads for the ADR because market makers must take into account the additional cost of borrowing securities and other financing costs to avoid settlement failures.[117] Additionally, the commenter argued, the incidence of fails would likely increase as a result of the misaligned settlement cycles, particularly where it is not possible to borrow securities to make delivery, and a knock-on effect could be to increase the incidence of buy-ins as well.[118]

Separately, the same commenter argued that the ETF creation/redemption process is impacted by the misalignment of global securities transaction settlement cycles where the basket of securities underlying an ETF includes foreign securities.[119] In explaining this view, the commenter observed that ETF shares are created by an authorized participant (''AP'') depositing the daily creation basket of shares (and/or cash) with the ETF and, in exchange for the deposit of the basket, the ETF issues to the AP a specified number of ETF shares, referred to as a ''creation unit.'' [120] The commenter further stated that if foreign securities comprise some or all of the ETF creation basket, the AP will

[99] *See id.*

[100] *Id.*

[101] *Id.*

[102] *See* 17 CFR 240.15c6–1(d).

[103] *See* T+1 Proposing Release, *supra* note 2, at 10448–49.

[104] *See* SIFMA April Letter, *supra* note 16, at 11.

[105] *See* T+1 Proposing Release, *supra* note 2, at 10446–47 (citing to Exchange Act Release No. 35750 (May 22, 1995), 60 FR 27994, 27995 (May 26, 1995)).

[106] *See* T+1 Proposing Release, *supra* note 2, at 10451.

[107] *See* Fidelity Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 1, 7–9; Virtu Financial Letter, *supra* note 16, at 2; *see also* ICI Letter, *supra* note 16, at 4.

[108] *See* Fidelity Letter, *supra* note 16, at 5.

[109] *See id.*

[110] SIFMA April Letter, *supra* note 16, at 7–9.

[111] *Id.* at 7.

[112] *See id.*

[113] *See id.* at 8.

[114] *See id.* As noted in the T+1 Proposing Release, under the Commission's existing exemption, an ADR is considered a separate security from the underlying security. Thus, if there are no transfer facilities in the U.S. for a foreign security but there are transfer facilities for an ADR based on such foreign security, only the foreign security will be exempt from Rule 15c6–1. *See* T+1 Proposing Release, *supra* note 2, at 10446.

[115] *See* SIFMA April Letter, *supra* note 16, at 8.

[116] *See id.*

[117] *See id.*

[118] *See id.*

[119] *See id.*

[120] *Id.*

typically need to purchase those securities in the local market.[121]

Another commenter urged the Commission to ''exempt from T+1 settlement'' U.S.-listed ETFs with baskets that contain foreign securities and ADRs.[122] In support of this recommendation, the commenter stated that the misalignment in settlement cycles between the U.S. and foreign jurisdictions that continue to settle on a T+2 basis, coupled with time zone differences, may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches. The same commenter stated that due to the resulting misalignment in settlement cycles between the U.S. and foreign markets upon transitioning to T+1, an ADR provider may incur borrowing and other costs related to the underlying foreign security to facilitate T+1 settlement of the ADR.[123] According to the commenter, these costs would likely be passed down to investors and thus make it more expensive to obtain investment exposure to foreign markets.[124]

As discussed in the T+1 Proposing Release, the Commission has also previously granted a separate exemption from Rule 15c6–1 for contracts for the purchase or sale of any security issued by an insurance company (as defined in section 2(a)(17) of the Investment Company Act) that is funded by or participates in a ''separate account'' (as defined in section 2(a)(37) of the Investment Company Act), including a variable annuity contract or a variable life insurance contract, or any other insurance contract registered as a security under the Securities Act of 1933 (''Securities Act'').[125] In granting this exemption, the Commission recognized that ''the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlement periods,'' and that ''compliance with the unique requirements of state and Federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process.'' [126] The T+1 Proposing Release requested public comment on whether the conditions set forth in the exemptive order for insurance products continued to be appropriate, or if they should be modified.

The three commenters that discussed this exemption uniformly agreed that the conditions and considerations set forth in the Insurance Products Exemption Order apply as much today, if not with greater force, as when the Commission adopted the exemption in 1995 (and which it left in place in 2017), and that the exemption should be preserved.[127] In support of this view, one commenter said it was not aware of any material change of circumstances that would warrant a change.[128] Another commenter observed that the same administrative processes and regulatory requirements under state and Federal law that warranted the insurance products exemption were even more relevant for T+1 since insurance products have only grown more complex since the industry transitioned to T+2 in 2017.[129]

C. Final Rule and Discussion

1. Amendment to Exchange Act Rule 15c6–1(a)

The Commission is amending paragraph (a) of Exchange Act Rule 15c6–1 as proposed. Rule 15c6–1(a) will prohibit broker-dealers from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the first business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Subject to the exceptions enumerated in paragraphs (a) and (b) of the rule, the prohibition in paragraph (a) of Rule 15c6–1 applies to all securities. However, as discussed in Part II.C.3 below, the Commission is amending paragraph (b) of Rule 15c6–1 to exclude security-based swaps from the requirements under paragraphs (a) and (c) of the rule.

The Commission's reasons for amending Rule 15c6–1(a) to shorten the standard settlement cycle to T+1 are consistent with those articulated in the T+1 Proposing Release, [130] and many of the comment letters submitted in response to that release. First, the Commission continues to believe that shortening the standard settlement cycle to T+1 would result in a reduction in the number and total value of unsettled trades that exist at any point in time. Assuming that trading volume remains constant, shortening the standard settlement cycle to T+1 should also decrease the total market value of all unsettled trades in the U.S. clearance and settlement system. This reduction in the number and total value of unsettled securities transactions should result in a reduction in market participants' overall exposure to market risk that arises from such transactions.

As explained in the T+1 Proposing Release, the Commission believes that shortening the standard settlement cycle to T+1 should also reduce CCP exposure to credit, market, and liquidity risk arising from its obligations to its participants, promoting the stability of the CCP and thereby reducing the potential for systemic risk to transmit through the financial system.[131] Reducing these risks to the CCP would enable the CCP to reduce the overall size of the financial resources that the CCP requires of its participants, lowering costs to the CCP's participants, and potentially their customers (*i.e.,* other market participants and investors).

As further explained in the T+1 Proposing Release, in periods of market stress, liquidity demands imposed by the CCP on its participants, such as in the form of intraday margin calls, can produce procyclical effects that reduce overall market liquidity.[132] The T+1 Proposing Release further stated that reducing the CCP's liquidity exposure by shortening the settlement cycle can

[121] *See id.*

[122] *See* ICI Letter, *supra* note 16, at 4; *see also* Virtu Financial Letter, *supra* note 16, at 2 (recommending that for primary creations and redemptions alternative settlement date options be available so the foreign security basket and the U.S. ETF settlement can be ''in sync'').

[123] *See id.*

[124] *See id.*

[125] *See* T+1 Proposing Release, *supra* note 2, at 10447.

[126] Exchange Act Release No. 35815 (June 6, 1995), 60 FR 30906, 30907 (June 12, 1995) (''Insurance Products Exemption Order'').

[127] *See* letter from Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers (Apr. 11, 2022), at 1–3; (''CAI Letter''); Fidelity Letter, *supra* note 16, at 5–6; SIFMA April Letter, *supra* note 16, at 9. These commenters also cited to comment letters that had been submitted in response to the T+2 Proposing Release in support of retaining the Insurance Products Exemption Order.

[128] *See* SIFMA April Letter, *supra* note 16, at 9 (stating that ''in addition to retaining the exemptions, SIFMA recommends that the exemptions either be codified in Rule 15c6–1(b), or that the Commission issue a new order to replace the orders issued in 1995 to facilitate access to the terms of the exemptions and to facilitate compliance with their terms''). This statement appears to collectively reference the exemption for insurance products, as well as the exemption for securities that do not have facilities for transfer and delivery in the U.S., both of which were issued in 1995.

[129] *See* Fidelity Letter, *supra* note 16, at 6.

[130] *See* T+1 Proposing Release, *supra* note 2, at 10447–49.

[131] *See id.* at 10448.

[132] *See id.*

help limit this potential for procyclicality, enhancing the ability of the CCP to serve as a source of stability and efficiency in the national clearance and settlement system.[133]

Shortening the standard settlement cycle to T+1 also would enable investors to access the proceeds of their securities transactions sooner than they are able to in the current T+2 environment. Specifically, in a T+1 environment, sellers would have access to cash proceeds one day sooner and buyers would see purchased securities in their accounts one day earlier relative to a T+2 standard settlement cycle.

Finally, market participants have already taken significant steps toward identifying the industry requirements and timelines for moving to T+1, and have made substantial progress in terms of planning such a move.[134] Due to these efforts, the Commission believes that a successful move to T+1 settlement can occur by the compliance date, [135] and the Commission believes that delaying such a move would allow undue risk to continue to exist in the U.S. clearance and settlement system.

In response to the comment letters focusing on the challenges and costs associated with the prospective misalignment of securities settlement cycles that may follow a move to T+1 in the U.S., [136] the Commission agrees that such misalignment will likely present some challenges that may increase costs for certain market participants, including asset managers. For example, the Commission recognizes that financing U.S. market transactions that settle on T+1 with the proceeds of an FX transaction that settles on T+2 may become more difficult, and therefore more costly, than financing of T+2 transactions is today. However, market participants can modify their existing business practices in ways that allow their securities transactions in the U.S. to settle on T+1.[137]

For example, market participants may extend the closing time for their FX trading desks, or they may pre-fund certain T+1 transactions that would otherwise be funded by an FX transaction that is executed on the same day as the securities transaction in the U.S. In addition, as one commenter stated, asset managers may, in some cases, redeem money market positions, or rely on other financial resources, to meet their financing needs.[138] While the Commission acknowledges that undertaking any of the three adjustments described here may increase certain costs for some market participants, shortening the standard settlement cycle to T+1 will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[139]

With respect to the suggestion of one commenter that the ''appropriate market authorities'' mandate a change in ''the official equity trading day'' for U.S. markets to close one hour earlier, at 3:00 p.m. rather than 4:00 p.m. ET, to provide firms with more time to match trades and ensure the ''settlement FX'' is in place for the following day, [140] the Commission believes that such a change is not necessary for a successful transition to T+1 to occur, and is otherwise not justified. As explained in the paragraph immediately above, the Commission believes that market participants will be able to adjust their business practices to address the challenges associated with the misalignment of the T+1 settlement cycle for securities in the U.S. markets with the T+2 settlement cycle for FX transactions. In addition, the Commission believes that the commenter's recommendation to shorten the length of the trading day in the U.S. equity markets specifically to address the commenter's concern about FX transactions could have a negative impact on the trading activity and operations of market participants. In particular, the Commission believes that modifying the length of the trading day would alter the existing operations of the U.S. securities markets prior to market close in a way that is disproportionate to the impact of the Commission's proposal on the ability of market participants to use FX transactions to finance securities transactions in the U.S markets because market participants will be able to adjust their business practices to address the challenges.[141]

With respect to the commenter's suggestion that the Commission ''could allow for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without [such arrangements] breaching an investment adviser's best execution obligation,'' [142] as explained above, the Commission believes that market participants will be able to adjust their business practices to address the challenges associated with the prospective mismatch between the settlement cycles for FX trades and the settlement cycle for securities transactions in the U.S. markets. Even if a mismatch between the settlement time for FX transactions and a T+1 standard settlement cycle for U.S. securities transactions raises the cost of funding some transactions, as discussed previously, the Commission also believes that shortening the standard settlement cycle to T+1 will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[143] Additionally, while the commenter correctly states that the Commission's proposal would allow parties to extend settlement only if they reach agreement at the time of the transaction, the commenter does not explain its understanding that ''this would be difficult to implement in the context of trades that require the settlement of FX transactions to occur,'' or that ''for this reason a standing option to settle at T+2 would be more effective.'' [144] To the extent the commenter is recommending that the Commission establish a separate T+2 settlement cycle for transactions that are funded using FX transactions, such an approach is not workable because the counterparties to such transactions generally would not know whether the transaction had been funded in this way—unless the parties agreed to disclose in advance of the transaction the source of funding—and therefore also would not know whether to expect their securities transaction to settle on T+1 or T+2.

[133] *See id.*

[134] *See, e.g.,* Deloitte, DTCC, ICI, and SIFMA, T+1 Securities Settlement Industry Implementation Playbook (Aug. 2022, updated Dec. 2022) (''T+1 Playbook''), *https://www.dtcc.com/ust1/industry-playbook.* Additional information and documentation related to the industry's ongoing planning related to the prospective move to a T+1 settlement cycle is also publicly available at *https://www.dtcc.com/ust1/industry-playbook.*

[135] *See infra* Part VII.A (discussing the compliance date of May 28, 2024, for the amendments to Exchange Act Rule 15c6–1(a)).

[136] *See* MarketAxess Letter, *supra* note 29, at 1–2; ICI Letter, *supra* note 16, at 4; Ballie Gifford Letter, *supra* note 50, at 1–2.

[137] The Commission observes that settlement cycles vary across asset classes. For example, transactions in U.S. Treasury securities currently settle on a T+1 basis, and market participants use the proceeds of FX transactions to fund transactions in U.S. Treasury securities despite mismatched settlement cycles. *See infra* note 618 (discussing the same, as well as other examples).

[138] AIMA Letter, *supra* note 29, at 5–6.

[139] *See infra* Part VIII.C.1 (discussing the anticipated benefits of shortening the standard settlement cycle to T+1).

[140] *See* Ballie Gifford Letter, *supra* note 50, at 2.

[141] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[142] *See* Ballie Gifford Letter, *supra* note 50, at 2.

[143] *See supra* note 139 and accompanying text (further discussing the other costs that would be reduced, as well as the increase in capital efficiency, and the reduction in risk to the U.S. clearance and settlement system).

[144] *See* Ballie Gifford Letter, *supra* note 50, at 2.

The Commission has also considered the arguments submitted by one commenter that any misalignment of settlement cycles that follows a move to T+1 in the U.S. would increase the number of fails in connection with cross-border transactions and may force broker-dealers to decrease or cease offering cross-border services to their clients, and ultimately will reduce liquidity for U.S. investors.[145] The commenter also specifically stated its expectation that there will be a significant number of settlement fails when a U.S. market participant is buying bonds and a ''cross-border participant'' is unable to deliver the bonds until T+2.[146] The Commission disagrees with each of the commenter's statements for the reasons explained below.

The Commission does not believe that the prospective misalignment of settlement cycles resulting from a move to T+1 will increase the number settlement fails connected with cross-border transactions.[147] While settlement fails can occur for many different reasons, market participants will have many months to continue their planning and preparation for the move to T+1. By the time the transition to T+1 occurs, market participants will have had ample opportunity to analyze whether any given transaction presents an unacceptable risk of a settlement fail, and, as stated above, [148] have options for adjusting their business practices to account for the challenges associated with settlement of certain transactions in a T+1 environment, such as FX transactions or other transactions with cross-border considerations.

With respect to the commenter's specific statement regarding the purchase of bonds by a U.S. market participant and the inability of a ''cross-border participant'' to deliver such bonds until T+2, the Commission acknowledges that in some cases it may be difficult for market participants to deliver bonds on T+1 when they seek to purchase the bonds in a foreign market and sell the same bonds in the U.S. market on the same day. However, market participants will know the timing of their settlement obligations prior to entering into contracts to purchase bonds in a foreign market and sell them in the U.S. market. If a market participant knows that the standard settlement cycle for the U.S. market transaction is shorter than the settlement cycle for the foreign market transaction, it may plan to either make arrangements to purchase or borrow the bonds sufficiently in advance of entering into the U.S. market transaction, or agree to a settlement date that is later than T+1 for the U.S. market transaction. In cases where none of these options is viable, market participants may also decide not to enter into the U.S. market transaction rather than entering into a transaction that would predictably result in a settlement fail. In the Commission's view, these same options also may be available to market participants with respect to transactions in other types of securities and are not unique to bond market transactions.[149]

With respect to the commenter's concerns regarding liquidity, even if moving to a T+1 settlement cycle in the U.S. does increase the number of fails associated with certain securities transactions in the U.S. market, it does not necessarily follow that any prospective misalignment of settlement cycles would result in either increased fails in the U.S. market overall, or a reduction in the amount of liquidity available to U.S. investors.[150] As explained above, the Commission expects that shortening the standard settlement cycle to T+1 will reduce risk in the clearance and settlement system by reducing the number of unsettled transactions that exist at any given point in time, [151] and will result in increased overall liquidity in the U.S. markets. That view is also consistent with many of the comment letters submitted in response to the T+1 Proposing Release.[152]

With respect to the comment stressing the need for the Commission to work with international regulators to coordinate a move to T+1 settlement on a global basis if possible, [153] the Commission and its staff intend to continue to work with regulators in other jurisdictions to ensure that the move to a T+1 settlement cycle in the U.S. is successfully implemented while minimizing any adverse impact the transition may have on market participants who engage in transactions in both the U.S. market and foreign markets. However, the Commission believes that delaying the transition to T+1 in the U.S. until other jurisdictions have also committed to implementing T+1 is not necessary for a successful transition to T+1 to occur in the U.S.[154] As a general matter, the Commission and Commission staff continue to engage with authorities in other jurisdictions regarding regulatory changes in the U.S., including to discuss differences between U.S. requirements and requirements in other jurisdictions, including through the Commission's ongoing participation in the Financial Stability Board, the International Organization of Securities Commissions (''IOSCO''), and CPMI–IOSCO.[155]

2. Response to Comments Relating to T+0 Settlement

The Commission has carefully considered the comments it received relating to the prospective benefits and challenges associated with moving to a T+0 settlement cycle. The Commission believes that shortening the settlement cycle further than T+1 could ultimately produce considerable additional benefits to investors compared with shortening the settlement cycle to T+1. However, the Commission continues to believe that shortening the settlement cycle to T+0 would require the industry to develop solutions to the many challenges identified by market participants as impediments to such a move, as discussed at length in the T+1 Proposing Release, [156] in the T+1 Report, [157] and in several comment letters [158] submitted in response to the T+1 Proposing Release. Such impediments include, for example, challenges related to maintaining multilateral netting, institutional trade processing, securities lending practices, money settlement systems, mutual fund and ETF processing, transaction funding

[145] *See* MarketAxess Letter, *supra* note 29, at 1.

[146] *Id.*

[147] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[148] *See supra* note 138 and accompanying text.

[149] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[150] *See infra* Part VIII.C.4 (further discussing the anticipated impact on settlement fails and liquidity).

[151] *See supra* note 130 and accompanying text.

[152] *See supra* notes 20, 22, and accompanying text.

[153] *Id.*

[154] The Canadian Securities Authorities recently issued a proposal to transition the securities markets in Canada to T+1 to align with the T+1 standard settlement cycle adopted in this release. *See* Canadian Securities Administrators, Press Release, Canadian securities regulators outline steps to support transition to T+1, Dec. 15, 2022, *https://www.securities-administrators.ca/news/canadian-securities-regulators-outline-steps-to-support-transition-to-t1/*.

[155] CPMI–IOSCO refers to the work undertaken jointly by IOSCO and the Committee on Payment and Market Infrastructures (''CPMI'') to enhance the international coordination of standard and policy development and implementation regarding clearing, settlement, and reporting arrangements, including with respect to financial market infrastructures such as central counterparties and central securities depositories.

[156] *See* T+1 Proposing Release, *supra* note 2, at 10467–74.

[157] *See* T+1 Report, *supra* note 61, at 10–11.

[158] *See supra* notes 59–60, 62–71, and accompanying text.

requirements, and corporate action processing. Given the operational and technological challenges associated with moving to a T+0 settlement cycle, the Commission believes that a successful move to T+0 would take longer to design and implement, and cost more than, a successful move to a T+1 settlement cycle.[159]

Shortening the settlement cycle to T+1 will result in substantial benefits to market participants that will be attainable much sooner than shortening the settlement cycle to T+0. Thus, the Commission believes shortening the settlement cycle to T+1 to be the more prudent and practical approach to shortening the settlement cycle at this time.

However, the Commission continues to believe, as it stated in the T+1 Proposing Release, that the transition to a T+1 settlement cycle can be a useful step in identifying potential paths to T+0 settlement.[160] As the securities industry moves forward to implement a T+1 standard settlement cycle, this process generally should include consideration of the potential paths to achieving T+0 to help ensure that investments in new technology and operations undertaken to achieve T+1 can maximize the value of such investments over the long term. Following the transition to T+1 in the U.S. markets, Commission staff will continue to work with industry leaders, public interest advocates, investors and other regulators to assess the future feasibility of a T+0 settlement standard cycle, and seek to identify ways to overcome the challenges associated with such a move, as articulated in the T+1 Proposing Release.[161]

3. Amendments to Exchange Act Rule 15c6–1(b)

The Commission is amending paragraph (b) of Exchange Act Rule 15c6–1 to exclude security-based swaps from the requirements under paragraph (a) of the rule. The T+1 Proposing Release asked whether the Commission should provide exemptive relief from the requirements under Rule 15c6–1 for transactions in security-based swaps.[162] As discussed above, the Commission received two comment letters that discussed whether Rule 15c6–1 should apply to security-based swap transactions and both of these commenters urged the Commission to exclude security-based swaps from the requirements under the rule.[163] The Commission agrees with the comment letter highlighting ''key differences'' between security-based swaps and other types of securities, and agrees that such differences warrant excluding security-based swaps from the requirements under paragraph (a) of Rule 15c6–1. In the Commission's view, such characteristics of security-based swaps make transactions in security-based swaps inconsistent with the purpose, intent, and structure of Rule 15c6–1, as discussed further below.

First, consistent with the Commission's understanding of security-based swap transactions, the commenter explains that for security-based swaps ''final net payment is paid by one party to the other at a future point in time to which the parties have contractually agreed.'' [164] The commenter also states that Rule 15c6–1 is ''inapt'' with respect to security-based swap transactions, which are ''generally bilateral and executory in nature,'' meaning that there are numerous terms that the parties typically agree to fulfill at later dates.[165] The Commission believes that the commenter's description of security-based swaps is accurate.

The Commission further believes that excluding security-based swaps from the requirements under paragraph (a) of Rule 15c6–1 would be consistent with the purpose of the rule. The Commission first proposed Rule 15c6–1 to establish T+3 as ''the standard settlement time frame for broker-dealer trades,'' [166] and explained in the T+3 Proposing Release that the rule ''is designed to establish T+3 as a new 'default' contract term.'' [167] The T+3 Proposing Release further stated that most broker-dealers do not specify all of the terms of a trade before execution, but rely on industry custom and SRO rules for those terms, and the Commission did not intend to change industry custom to require broker-dealers to specify contract terms.[168] Unlike other securities transactions, however, security-based swap contracts generally do include contract terms that specify the timing of contractual obligations, and for that reason there is not a need for any rule-based ''default'' contract term that provides for the timing of such obligations.

Because security-based swap contracts provide for the timing of contractual obligations, the Commission does not anticipate that it will become necessary for Rule 15c6–1(a) to apply to security-based swap transactions at any point in the future. As such, the Commission is amending the text of Rule 15c6–1(b) to exclude security-based swaps from the requirements under Rule 15c6–1(a), rather than issuing a new exemptive order that would accomplish the same objective.

As discussed further in Part VII.B, the amendments to Rule 15c6–1(b) that the Commission is adopting in this document, including both the new provision that exempts security-based swaps from the scope of paragraph (a), as well as the technical conforming changes to Rule 15c6–1(b) described below, will become effective upon the effective date of the rule. The Commission has determined that these changes should become effective upon the effective date, rather than the compliance date for Rule 15c6–1 more generally, to avoid any possible confusion as to whether broker-dealer transactions in security-based swaps may or may not be subject to Rule 15c6–1(a) between the effective date and the compliance date.

As explained in the T+1 Proposing Release, Rule 15c6–1(b)(1) currently provides an exclusion for contracts involving the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.[169] No commenters suggested amending the exclusion under existing Rule 15c6–1(b)(1), and the amendments to Rule 15c6–1(b) being adopted in this document do not include any changes to this exclusion.

In recognition of the fact that the Commission may not have identified all situations or types of trades where the application of Rule 15c6–1(a) would be problematic, existing Rule 15c6–1(b)(2) provides that the Commission may exempt by order additional types of trades from Rule 15c6–1(a), either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and

[159] Because industry participants have not developed solutions to the technological, operational, and business challenges and impediments associated with a move to a T+0 settlement cycle, at this time the Commission cannot reasonably provide estimates regarding the length of time that would be necessary for a successful move to T+0, or the costs associated with such a move.

[160] *See* T+1 Proposing Release, *supra* note 2, at 10465.

[161] *Id.* at 10467–75.

[162] *See id.* at 10451.

[163] *See supra* note 78 and accompanying text.

[164] SIFMA April Letter, *supra* note 16, at 11.

[165] *Id.*

[166] T+3 Proposing Release, *supra* note 4, at 11806–07.

[167] *Id.* at 11809.

[168] *See id.*

[169] *See* T+1 Proposing Release, *supra* note 2, at 10446.

the protection of investors.[170] No commenters suggested any amendments to paragraph (b)(2) of Rule 15c6–1, and the Commission is not amending this provision of the rule. Accordingly, the Commission is making no substantive changes to the existing provision that is currently designated as paragraph (b)(2). However, the amendments to Rule 15c6–1(b) being adopted in this document will redesignate existing paragraph (b)(2) of the rule as paragraph (b)(3) of the rule, and a new provision that excepts security-based swap transactions from the requirements under paragraph (a) of Rule 15c6–1 will be designated as paragraph (b)(2) of the rule.[171]

The rule amendments being adopted in this document also strike the term ''contracts'' from the first clause in paragraph (b) of Rule 15c6–1, and add the words ''Contracts for'' to the beginning of paragraphs (b)(1) and (3) (formerly paragraph (b)(2)). These technical changes are intended to account for the fact that the definition of a security-based swap under section 3(a)(68) of the Exchange Act [172] incorporates the term ''contract'' and leaving the same term in the first clause of Rule 15c6–1(b) could create confusion as to the meaning of the new provision under paragraph (b)(2) of the rule, which refers to security-based swaps.

4. Amendment to Exchange Act Rule 15c6–1(c)

The Commission is amending paragraph (c) of Exchange Act Rule 15c6–1 to shorten the settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction. Specifically, the amendment to paragraph (c) of Rule 15c6–1 will shorten the standard settlement cycle for these offerings from T+4 to T+2. As amended, paragraph (c) of Rule 15c6–1 will provide that paragraph (a) of the rule does not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. ET on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the second business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction.[173]

As explained in the T+1 Proposing Release, in 1995 the Commission added paragraph (c) to Rule 15c6–1 in response to public comments stating that new issue securities could not settle on T+3 because prospectuses could not be printed prior to the trade date (the date on which the securities are priced).[174] The T+1 Proposing Release proposed to delete paragraph (c) based on the Commission's belief that expanded application of the ''access equals delivery'' standard for prospectus delivery supports removing paragraph (c) from Rule 15c6–1 because delays in the process that previously made delivery of the prospectus difficult to achieve under the standard settlement cycle have been mitigated by the ''access equals delivery'' standard.[175] However, the T+1 Proposing Release also acknowledged that the T+1 Report had recommended the Commission retain paragraph (c), but modify it to shorten the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET from T+4 to T+2.[176] Additionally, the Commission requested public comment on the proposed deletion of paragraph (c) and requested that, to the extent that commenters agree with the T+1 Report, such commenters provide data or other detailed information explaining why a T+1 settlement cycle is an inappropriate standard for all firm commitment offerings priced after 4:30 p.m.[177]

After reviewing the comment letters received in response to the T+1 Proposing Release, the Commission continues to believe that the process that made delivery of the prospectus difficult to achieve under the standard settlement cycle has been mitigated by the ''access equals delivery'' standard. However, the Commission also is persuaded by the comment letter arguing that the Commission should retain paragraph (c) of Rule 15c6–1, but shorten the settlement cycle to T+2 for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.[178]

The Commission is persuaded that a T+1 settlement cycle is not long enough to prevent firm commitment offerings priced after 4:30 p.m. ET from failing to settle on time. In particular, the Commission acknowledges that paragraphs (a) and (d) of Rule 15c6–1 would not allow parties to agree to a longer settlement cycle when circumstances unforeseen at the time of the pricing of the transaction arise that prevent settlement on T+1.[179] Specifically, while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date, they must reach that agreement at the time of the transaction and must take affirmative steps in advance of each such transaction in order to obtain relief under paragraph (a) or (d).

With respect to unforeseen circumstances that arise in connection with firm commitment offerings, for example, as stated by a commenter, it is not unusual for unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties to arise.[180] Such unanticipated issues could lead to increased failures to settle trades on a T+1 basis with respect to firm commitment offerings priced after 4:30 p.m. ET. For these reasons, the Commission has reconsidered its proposed deletion of paragraph (c) of Rule 15c6–1.

As stated above, the comment letter discussing the proposed deletion of paragraph (c) stated that the Commission should amend paragraph (c) to establish a T+2 settlement cycle for firm commitment offerings priced after 4:30 p.m. ET.[181] The Commission agrees with the commenter's recommendation, and is amending paragraph (c) to establish a T+2 settlement cycle for these offerings, rather than deleting paragraph (c) as the Commission proposed. In the T+1 Proposing Release, the Commission considered such a T+2 standard as an alternative to deleting paragraph (c), but proposed deleting paragraph (c) to fully

[170] *See* 17 CFR 240.15c6–1(b)(1).

[171] *See* 17 CFR 240.15c6–1(b)(1)–(3).

[172] *See* 15 U.S.C. 78c(a)(68).

[173] *See* 17 CFR 240.15c6–1(c).

[174] *See* T+1 Proposing Release, *supra* note 2, at 10449.

[175] *See id.*

[176] *See id.* (citing T+1 Report, *supra* note 61, at 33).

[177] *See id.* at 10450.

[178] *See supra* Part II.B.3 (providing a detailed description of comment letters urging the Commission to adopt a T+2 settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction).

[179] In the T+1 Proposing Release the Commission acknowledged that the complex documentation associated with firm commitment offerings may in some cases require more time to complete than is available under a T+1 standard settlement cycle. *See* T+1 Proposing Release, *supra* note 2, at 10450–51.

[180] *See* SIFMA April Letter, *supra* note 16, at 10.

[181] *See id.*

harmonize the settlement of primary offerings with the settlement cycle for secondary market trades, thereby removing all financial and operational risks that can arise when the same security settles on two different settlement cycles.[182] In proposing this approach, the Commission stated its belief that paragraph (d) would provide sufficient flexibility to manage the need for a longer settlement cycle when it arises.[183] In light of the comments received, and as discussed above, the Commission now believes that the flexibility provided by paragraph (d) is insufficient to ensure timely settlement for certain firm commitment offerings under a T+1 standard settlement cycle. Accordingly, the Commission believes that the proposed alternative—retaining paragraph (c) but shortening the standard settlement cycle under the provision to T+2—would best achieve the Commission's stated objective of establishing a common standard that effectively minimizes the financial and operational risks associated with the settlement of firm commitment offerings. As discussed in the T+1 Proposing Release, the T+1 Report indicates that, under the existing T+4 settlement cycle for firm commitment offerings, most transactions currently settle on a T+2 basis. Consistent with the comments received, the Commission believes that a T+2 settlement cycle for firm commitment offerings priced after 4:30 p.m. ET provides sufficient time and flexibility to complete documentation and address any other issues that may arise in the preparation of a firm commitment offering to ensure timely settlement.

5. Retention of Existing Exchange Act Rule 15c6–1(d) Unchanged

Because the Commission is not deleting paragraph (c) of Rule 15c6–1, the Commission is not adopting the proposed technical changes to paragraph (d) of the rule. The Commission did not propose any other changes to paragraph (d) of Rule 15c6–1, and the Commission received no comments recommending changes to this provision of the rule.

The Commission agrees with the commenter stating that paragraph (d) should be retained [184] because paragraph (d) enables underwriters and the parties to a transaction to agree, in advance of the transaction, to a settlement cycle other than the standard settlement cycle specified in either paragraph (a) or (c) of the rule, when necessary to manage obligations associated with the firm commitment offerings. Market participants involved in firm commitment offerings of certain debt and preferred securities commonly rely on paragraph (d) of Rule 15c6–1 to extend settlement in order to allow time for the completion of the extensive documentation associated with such offerings,[185] and the Commission believes it is not always possible for such documentation to be completed within the time frames provided by under paragraphs (a) and (c) of Rule 15c6–1. Therefore the amendments to Rule 15c6–1 being adopted in this document do not include any changes to paragraph (d) of the rule.

6. Exemptive Orders Under Exchange Act Rule 15c6–1(b)

The Commission has reviewed the comments submitted in response to the T+1 Proposing Release that relate to the Commission's existing exemptive orders issued pursuant to Exchange Act Rule 15c6–1(b),[186] and, because no changes are needed to facilitate an orderly transition to a T+1 settlement cycle, the existing exemptive orders will remain in effect without modification. The Commission's view that no changes to the orders are needed is consistent with the comments urging that the Commission retain both the existing exemption for certain insurance products, as well as the exemption for certain foreign securities, as described above.[187]

With respect to the comments recommending that the Commission expand the scope of the existing exemptive order relating to securities that do not have facilities for transfer or delivery in the U.S.,[188] the Commission is not persuaded that expanding the scope of the order is necessary at this time and is declining to do so for the reasons discussed below. However, the Commission will continue to monitor how shortening the standard settlement cycle to T+1 in the U.S. affects market participants.

Notwithstanding the comments raising concerns that the existing exemption for certain foreign securities does not exempt ADRs from the T+1 standard settlement cycle,[189] the Commission believes that ADRs should continue to be subject to Rule 15c6–1(a). In response to one commenter's statements relating to the timely sale of ADR transactions using newly created ADRs,[190] the Commission understands that a large percentage of ADR trading activity involves purchases and sales of existing ADRs in the U.S. markets. Thus, the commenter's concerns would seem to relate to only a small percentage of ADR trading activity.[191]

The commenter stated that ''[t]his type of trade'' will not be possible if the underlying foreign shares settle on T+2 and the related ADR is required to settle on T+1, and the result is likely to be wider bid-ask spreads for the ADR because market makers must take into account the additional cost of borrowing securities and other financing costs to avoid settlement failures.[192] While bid-ask spreads could widen and costs could increase for this narrow category of ADR transactions, the Commission believes that ADRs should be subject to the requirements under Rule 15c6–1(a). Exempting ADRs from the requirements under Rule 15c6–1(a) would create another misalignment between the securities settlement cycle for ADRs and the standard settlement cycle for other types of securities, which the Commission believes would unduly dilute the benefits of a standard settlement cycle. As a general matter, a standard settlement cycle facilitates operational efficiency, reduces operational costs and transaction costs, and reduces risk for market participants.

In this particular case, the Commission believes that exempting ADRs from Rule 15c6–1(a) would diminish the benefits associated with shortening the standard settlement cycle to T+1. As previously discussed in detail, such benefits include risk reduction (*e.g.,* credit, market, liquidity and systemic risk), as well as increased capital efficiency.

The Commission also does not agree with the commenter that it will be impossible for market makers and other market participants to purchase foreign shares and sell related ADRs in the U.S. on the same trading day, and thus timely settle the sale of the ADRs using the newly created ADRs.[193] Rather, the Commission believes that market participants can borrow the underlying securities necessary to settle the newly created ADR on T+1 if the securities are available. While the commenter also raises the concern that in some cases it will not be possible to borrow the

[182] T+1 Proposing Release, *supra* note 2, at 10450.

[183] *Id.* at 10492.

[184] *See* SIFMA April Letter, *supra* note 16, at 11.

[185] *See* T+1 Report, *supra* note 61, at 33.

[186] *See supra* notes 105 and 126.

[187] *See supra* Part II.B.5.

[188] *See* SIFMA April Letter, *supra* note 16, at 8–9; ICI Letter, *supra* note 16, at 4.

[189] *See* SIFMA April Letter, *supra* note 16, at 8; ICI Letter, *supra* note 16, at 4.

[190] *See* SIFMA April Letter, *supra* note 16, at 8.

[191] *See infra* notes 606–616 (discussing the anticipated economic effect on transactions in ADRs).

[192] *See id.; see also* ICI Letter, *supra* note 16, at 4.

[193] *See* SIFMA April Letter, *supra* note 16, at 8.

securities to make delivery,[194] the possibility that certain securities may be costly or difficult to borrow at certain times is not limited to ADRs. As previously discussed, establishing a standard settlement cycle facilitates operational efficiency, reduces operational costs and transaction costs, and reduces risk for market participants. Providing exemptions for securities that can be costly or difficult to borrow—when the cost or difficulty to borrow will vary over time in response to movements in the price of the security, a dynamic unrelated to the length of the settlement cycle—would erode these benefits.

The Commission also has reviewed the comments urging the Commission to ''exempt from T+1 settlement'' U.S.-listed ETFs with baskets that contain foreign securities and ADRs,[195] and has determined that such an exemption is not warranted at this time for reasons that are similar to those discussed above in response to the comments raising concerns regarding the impact the move to T+1 will have on market participants trading ADRs. As a general matter, the Commission believes that allowing ETFs to settle on a settlement cycle that is longer than T+1 would diminish the benefits associated with a standard settlement cycle and shortening the standard settlement cycle to T+1.

The Commission recognizes that settling trades in U.S.-listed ETFs with baskets that contain foreign securities may become more costly for certain APs in a T+1 environment, as result of the prospective misalignment between the settlement cycle for such trades and the settlement cycle for the underlying foreign securities. For example, the Commission acknowledges that during the ETF share creation process, APs may need to post collateral or establish credit lines to satisfy foreign market requirements. However, as previously discussed, the Commission believes that moving to a T+1 settlement cycle will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[196]

The Commission also disagrees with the comment stating that the prospective misalignment in settlement cycles may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches. Market participants will have many months to implement any operational requirements they identify associated with the move to a T+1 settlement cycle, including the operational requirements associated with the settlement of U.S.-listed ETFs with baskets that include foreign securities and/or ADRs. The industry has already identified many such requirements,[197] and the Commission believes that market participants will have sufficient time to complete the operational changes necessary to minimize these risks. Moreover, as explained above,[198] the Commission believes that shortening the settlement cycle will reduce certain risks for market participants overall (*e.g.,* credit, market and liquidity risk), including these risks faced by APs.

The Commission also does not believe that it is necessary at this time to amend the text of paragraph (b) of Rule 15c6–1 to codify the existing exemptive order for securities that do not have facilities for transfer or delivery in the U.S., or the existing exemptive order for certain insurance products. As noted above, one commenter recommended that the existing exemptions ''either be codified in Rule 15c6–1(b), or the Commission issue a new order to replace the orders issued in 1995 to facilitate access to the terms of the exemptions and to facilitate compliance with their terms.'' [199]

Since these orders were first issued in 1995, both orders have provided adequate regulatory relief to market participants who engage in transactions that the orders were intended to cover. Codifying the exemptions is not necessary to facilitate the transition to a T+1 settlement cycle, and the Commission is aware of no evidence that market participants lack knowledge of the terms of the exemptive orders or have been unable to comply with the orders because they have not been codified in Rule 15c6–1.

III. Exchange Act Rule 15c6–2—Same-Day Affirmation

A. Proposed Rule 15c6–2

The Commission proposed Rule 15c6–2 to require that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker or dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer unless such broker or dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[200]

In proposing Rule 15c6–2, the Commission did not define the terms ''allocation,'' ''confirmation,'' or ''affirmation,'' but explained that trade allocation refers to the process by which an institutional investor (often an investment adviser) allocates a large trade among various client accounts or determines how to apportion securities trades ordered contemporaneously on behalf of multiple funds or non-fund clients.[201] The T+1 Proposing Release also explained that the terms ''confirmation'' and ''affirmation'' in proposed Rule 15c6–2 refer to the transmission of messages among broker-dealers, institutional investors, and custodian banks to confirm the terms of a trade executed for an institutional investor, a process necessary to ensure the accuracy of the trade being settled. The Commission stated its belief that these terms are widely used and generally understood by market participants who engage in institutional trade processing.[202]

In addition, in proposing Rule 15c6–2, the Commission used the term ''confirmation'' to refer to the operational message that includes trade details provided by the broker-dealer to the customer to verify trade information so that a trade can be prepared for settlement on the timeline established in Rule 15c6–1(a), in contrast to the confirmations required under Rule 10b–10, which concern a series of disclosures that broker-dealers are required to provide in writing to customers at or before completion of a transaction.[203] The Commission explained that the term ''confirmation,'' as used in proposed Rule 15c6–2, should be understood to refer to the institutional trade processing message or verification and not the disclosure required under Rule 10b–10.[204]

The Commission also explained that the term ''customer,'' as used in proposed Rule 15c6–2, includes any person or agent of such person who opens a brokerage account at a broker-

[194] *See id.*

[195] *See id.;* ICI Letter, *supra* note 16, at 4.

[196] *See supra* note 139 and accompanying text.

[197] *See* T+1 Playbook, *supra* note 134, at 33 (providing recommendations to improve timing in nightly batch cycles, make use of lines of credit to address the potential need for more collateral, and establishing connections for real-time messaging with NSCC).

[198] *See supra* note 139 and accompanying text.

[199] *See supra* note 128 and accompanying text.

[200] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[201] *Id.*

[202] *See id.*

[203] *See id.* 10453–54.

[204] *See id.* 10454.

dealer to effect an institutional trade or purchases or sells a security for which the broker-dealer receives or will receive compensation.[205] The Commission stated that the term is intended to cover both the institutional investor and any and all agents acting on its behalf.[206]

B. Comments

1. Existing Commercial Incentives for Timely Trade Allocations, Confirmations, and Affirmations

Two commenters stated that the written agreements required under proposed Rule 15c6–2 are unnecessary to improve same-day affirmation rates because commercial incentives to achieve timely trade allocations, confirmations, and affirmations already exist.[207] One commenter identified, for example, the following incentives for firms to achieve on-time settlement: increased cost of settling a trade without netting through the CCP; increased costs associated with the processing of trades that are not affirmed; costs associated with buy-ins for trades that are not settled on a timely basis; and the potential for customer dissatisfaction related to the failure to timely settle or the increased costs associated with such failure.[208] The second commenter stated that it is in an institutional customer's best interest to timely allocate, confirm, and affirm its trades, as doing so is the first step and a pre-condition to settling a trade.[209] This commenter also stated more generally that financial disincentives for institutional customers that do not meet a same-day affirmation timeline already exist.[210]

2. Linking Settlement Instructions to Affirmation

In the T+1 Proposing Release, the Commission stated that broker-dealers are best positioned to ensure the timely settlement of institutional trades and, as such, should be able to ensure via their customer agreements that institutional customers or their agents also adjust their operations to facilitate same-day affirmation.[211] In response to this statement, one commenter stated that settlement requires client instruction through a client's agents, who are typically custodians, against a broker-dealer's trades.[212] The commenter also stated that, because custodians often act as an agent for institutional clients, custodians are highly dependent on the implementation of efficient and timely operating models and processes across market participants at the trading level, including institutional clients and broker-dealers, before they can effect settlement on their client's behalf.[213] In this regard, the commenter requested that the Commission consider requiring through Rule 15c6–2 the linking of settlement instructions to the affirmation.[214]

3. Definitions of Certain Terms

In the T+1 Proposing Release, the Commission requested comment as to whether the terms ''allocation,'' ''confirmation,'' ''affirmation,'' ''end of the day on trade date,'' and ''customer'' should be defined for purposes of Rule 15c6–2.[215] In response, one commenter agreed with the Commission's view, as articulated in the T+1 Proposing Release, and expressed support for not defining these terms in the rule.[216] This commenter stated that, because operational and technological processes and practices continually evolve across market participants who engage in institutional trade processing, the above terms are best grounded in the prevailing market practices and uses understood by these market participants.[217] A second commenter, in contrast, stated that it would generally be helpful for the Commission to provide definitions of terms within the context of the proposed rule, even where such terms are commonly used in the industry.[218] The commenter recommended that the Commission define each of the above terms for purposes of Rule 15c6–2 and suggested that the Commission also define the term ''trade'' because there are multiple uses of this term by the industry.[219] The commenter further stated that the term ''affirmation'' is open to some interpretation and suggested that the Commission define this term in particular.[220]

4. Use of Third Parties To Achieve Same-Day Affirmation

One commenter requested that the Commission clarify whether, under proposed Rule 15c6–2, an investment adviser that has entered into an agreement with a broker-dealer pursuant to the proposed rule may rely on a third party—such as a third party order management system, sub-adviser, or custodian—to allocate or affirm trades.[221] This commenter, in a later letter, stated that ''upon further analysis, we understand that requiring advisers to enter into specific contractual arrangements would create significant challenges for advisers,'' and recommended that the Commission replace the proposed requirement of a written agreement with a requirement that investment advisers adopt and implement policies and procedures reasonably designed to ensure that allocations, confirmations, and affirmations are completed on a timeline that allows settlement on T+1.[222] As the commenter explained, this approach would ''relieve investment advisers, when they are parties to an allocation, confirmation, and affirmation process, from the burden of negotiating and having to regularly update written agreements,'' and ''create incentives for investment advisers to work with broker-dealers and other third parties to complete the process in a timely manner while allowing them greater flexibility to comply in a manner best suited to their existing infrastructure, clients, and resource levels.'' [223]

5. Challenges Associated With Requiring Written Agreements in Support of Increasing Same-Day Affirmations

Although commenters generally supported the Commission's overall goal of increasing same-day affirmations, several commenters expressed a number of concerns with

[205] *See id.*

[206] *See id.*

[207] *See* Fidelity Letter, *supra* note 16, at 3–4 (stating that proposed Rule 15c6–2 is not necessary because ''market incentives already exist to timely allocate, confirm, and affirm trades''); letter from Tom Price, Managing Director, SIFMA (Aug. 26, 2022), at 2 (''SIFMA August 26th Letter'') (stating that written agreements, as proposed by Rule 15c6–2, are unnecessary because ''there are many commercial incentives in place for industry participants to meet market standard settlement timelines'').

[208] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[209] *See* Fidelity Letter, *supra* note 16, at 3.

[210] *See id.*

[211] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[212] *See* AGC April Letter, *supra* note 16, at 3.

[213] *See id.*

[214] *See id.* at 2.

[215] *See* T+1 Proposing Release, *supra* note 2, at 10455.

[216] *See* letter from Matthew Stauffer, Managing Director and Head of DTCC Institutional Trade Processing, DTCC ITP LLC (Apr. 11, 2022), at 3 (''DTCC ITP April Letter'').

[217] *See id.* (explaining that by not prescribing definitions for the key terms used in proposed Rule 15c6–2, the Commission would allow such terms to continue to evolve).

[218] *See* letter from Jim Kaye, Americas Regional Director, FIX Trading Community (Apr. 11, 2022), at 2–3 (''FIX Trading Letter'').

[219] *See id.* The commenter provided suggested definitions for the terms ''allocation,'' ''confirmation,'' and ''affirmation'' and recommended that the term ''end of the day on trade date'' be defined as a specific time of day together with its time zone. *Id.* at 2.

[220] *See id.* at 2.

[221] *See* IAA April Letter, *supra* note 16, at 3–4.

[222] *See* letter from Gail C. Bernstein, General Counsel, and William A. Nelson, Associate General Counsel, Investment Adviser Association (Oct. 19, 2022), at 1–2 (''IAA October Letter'').

[223] *Id.*

the written agreement requirement in proposed Rule 15c6–2.[224] First, commenters stated that in many scenarios written agreements do not currently exist between the parties to an institutional transaction and would be highly burdensome to establish specifically for the purpose of facilitating same-day affirmation. For example, two commenters explained that agreements do not exist because the parties engage in their transactions on a receive-versus-payment/deliver-versus-payment (''RVP/DVP'') basis without an underlying agreement.[225] In an RVP/DVP transaction, securities are only delivered by the seller when payment has been made by the buyer.

Some commenters explained that where written agreements do not already exist, the parties would need to draft new agreements solely for the purpose of compliance with the rule.[226] In this regard, commenters stated that, as proposed, Rule 15c6–2 would result in burdensome, time consuming, and costly contract negotiations, as broker-dealers would have to enter into a new or amended written agreement with each of their institutional customers.[227] Moreover, another commenter stated that certain clients may not authorize their investment advisers to enter into the type of written agreement required under proposed Rule 15c6–2, while other clients may insist on negotiating bespoke guideline requirements, such as arbitration or governing law, into their written agreements.[228] Multiple commenters further expressed the view that the proposed written agreement requirement would create unnecessary practical burdens and costs.[229] Several of these commenters stated that it would be impracticable for institutional customers to enter into such agreements because they often rely on other parties to complete certain elements of the allocation, confirmation, and affirmation process.[230] One of these commenters stated more generally that a requirement for broker-dealers to enter into a written agreement with each of their institutional customers is not practically feasible.[231] One commenter also observed that it is unclear under proposed Rule 15c6–2 whether broker-dealers should be entering into the written agreements with the investment advisers or with their customers.[232]

Multiple commenters expressed a separate concern that proposed Rule 15c6–2 would expose a non-breaching broker-dealer to potential liability if its customer, or customer's agent, breaches the written agreement, even if through no fault of the broker-dealer.[233] In raising this concern, some commenters stated that the proposed rule does not specify what should happen if the broker-dealer's customer or its agent breaches the written agreement, which may put broker-dealers in the difficult position of trying to regulate the conduct of their customers through commercial contracts.[234] Another commenter also observed that the proposed rule would place the compliance burden on broker-dealers, even though the customer—and not the broker-dealer—has the necessary information to complete the allocation, confirmation, and affirmation process.[235] However, under proposed Rule 15c6–2, a broker-dealer is only responsible for its own actions and not for the actions of its customers or any other relevant parties to an institutional transaction, as discussed further in Part III.C.

Further, several commenters expressed the view that a written agreement requirement, as proposed in Rule 15c6–2, would not be an effective approach for achieving the Commission's overall goal of increasing same-day affirmations.[236] One commenter observed, for example, that a written agreement requirement is unnecessary because the industry recognizes the importance of same-day affirmations and is actively working toward achieving same-day allocations, confirmations, and affirmations.[237] In this regard, some commenters recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement that broker-dealers establish written policies and procedures reasonably designed to achieve same-day affirmation.[238] Some of these commenters further stated that such a principles-based approach would relieve the parties to an institutional transaction from the burden of negotiating a written agreement; incentivize broker-dealers to work with their customers to complete the allocation, confirmation, and affirmation process in a timely manner; and afford broker-dealers more flexibility to comply with the rule in a manner best suited to their specific business models, customer bases, and products.[239]

Finally, two commenters indicated that the proposed requirement for written agreements in Rule 15c6–2 may encourage parties to cancel their transactions before the end of trade date when an allocation, confirmation, or affirmation cannot be completed to avoid violating the proposed rule.[240]

6. End-of-Day Trading, Transactions Across Multiple Time Zones, and Variations in Local Holidays as Obstacles to Same-Day Affirmation

Several commenters raised concerns about certain obstacles—such as end-of-day trading, transactions across multiple time zones, and variations in holiday schedules—that could interfere with achieving same-day affirmation under proposed Rule 15c6–2.[241] One commenter stated that, given time zone

[224] *See* ASA Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 3–4; IAA October Letter, *supra* note 222, at 1–3; ICI Letter, *supra* note 16, at 5–7; ISITC Letter, *supra* note 29, at 2; MarketAxess Letter, *supra* note 29, at 2–3; SIFMA April Letter, *supra* note 16, at 5–6; State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 3.

[225] *See* Fidelity Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 5.

[226] *See* ISITC Letter, *supra* note 29, at 2; Fidelity Letter, *supra* note 16, at 4.

[227] *See* ICI Letter, *supra* note 16, at 5–6; MarketAxess Letter, *supra* note 29, at 2–3; SIFMA April Letter, *supra* note 16, at 5–6.

[228] *See* SIFMA April Letter, *supra* note 16, at 5.

[229] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[230] *See* ICI Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[231] *See* ASA Letter, *supra* note 16, at 2.

[232] *See* SIFMA April Letter, *supra* note 16, at 5.

[233] *See* Fidelity Letter, *supra* note 16, at 4; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; Virtu Financial Letter, *supra* note 16, at 3.

[234] *See* Fidelity Letter, *supra* note 16, at 4 (questioning whether, under proposed Rule 15c6–2, a broker-dealer would be subject to SEC enforcement if it failed to enforce private contractual provisions with its customers regarding same-day affirmation); MarketAxess Letter, *supra* note 29, at 3 (stating that broker-dealers are not regulators and, as such, cannot force their customers to upgrade their technology or processes to achieve same-day affirmations).

[235] *See* SIFMA April Letter, *supra* note 16, at 6.

[236] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 5; State Street Letter, *supra* note 16, at 4.

[237] *See* ICI Letter, *supra* note 16, at 7.

[238] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 7; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 3; *see also* IAA October Letter, *supra* note 222, at 1–2; SIFMA August 26th Letter, *supra* note 207, at 2.

[239] *See* ICI Letter, *supra* note 16, at 7; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; *see also* IAA October Letter, *supra* note 222, at 2–3; SIFMA August 26th Letter, *supra* note 207, at 2.

[240] *See* ICI Letter, *supra* note 16, at 7; Virtu Financial Letter, *supra* note 16, at 3.

[241] *See* AIMA Letter, *supra* note 29, at 2, 6–7; ISITC Letter, *supra* note 29, at 6; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

differences, a non-U.S. investment manager might not be able to fill and execute its U.S. securities transactions before its local close of business and, therefore, would not be able to achieve same-day affirmation.[242] Another commenter indicated that same-day affirmation may be difficult to achieve for those in the same or similar time zones for trades occurring at or near the U.S. market close, and that same-day affirmation may not be feasible for those located in time zones several hours ahead of the U.S., as new cut-off times would occur late into their overnight.[243] Some commenters stated that investment advisers and their clients often rely on other parties to complete certain aspects of the allocation, confirmation, and affirmation process and, in doing so, are subject to the time zones and local holiday schedules in the countries where these other parties operate, which could prevent achieving same-day affirmation.[244] The same commenters requested that the Commission modify proposed Rule 15c6–2 to offer broker-dealers some flexibility in situations where same-day affirmation cannot be achieved because of circumstances that are beyond their control.[245] In this regard, some commenters recommended that the Commission replace the written agreement requirement in proposed Rule 15c6–2 with a requirement that broker-dealers adopt written policies and procedures to facilitate same-day affirmation.[246]

7. Alternative Rule Recommended in SIFMA August Letter

The Commission received an additional comment letter from SIFMA addressing alternatives to proposed Rule 15c6–2.[247] SIFMA recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement for policies and procedures to support faster processing, as it would allow individual firms to design policies and procedures tailored to their business models, products, and unique customer bases while advancing the Commission's interest in same-day affirmation.[248] The Commission generally agrees that requiring broker-dealers to establish, maintain, and enforce policies and procedures for achieving same-day affirmation is an effective way to improve affirmation rates because it promotes an orderly settlement process, thereby helping to ensure timely settlement in a shortened settlement cycle. The Commission also believes that establishing, maintaining, and enforcing policies and procedures as an alternative approach to compliance aside from entering into written agreements enables broker-dealers to avoid the substantial burdens and challenges that may be associated with negotiating written agreements in some cases. Nonetheless, as previously discussed in Part III.B.5 above, the Commission also believes that it is appropriate to retain the requirement for written agreements as one of two options for broker-dealers to achieve compliance with Rule 15c6–2.

SIFMA's recommendation included a number of elements. First, SIFMA requested that Rule 15c6–2 be revised to require broker-dealers to establish, document, and uphold policies and procedures reasonably designed to maintain timely settlement rates.[249] Second, SIFMA recommended that such policies and procedures: (i) address the timing of allocations, confirmations, and affirmations to ensure timely settlement; (ii) include a communication plan with market participants; (iii) provide a description of a broker-dealer's ability to monitor compliance; (iv) include the development of controls and supervisory procedures; and (v) include the development of metrics to measure compliance.[250] The Commission generally agrees with SIFMA's approach and, as discussed in Part III.C below, is revising final Rule 15c6–2 to allow broker-dealers to achieve compliance with the rule either by (1) entering into written agreements or (2) establishing, maintaining, and enforcing reasonably designed policies and procedures. Below, the Commission discusses each of SIFMA's recommendations in turn.

First, SIFMA requested that Rule 15c6–2 be revised to require broker-dealers to establish, document, and uphold policies and procedures reasonably designed to maintain timely settlement rates.[251] While the Commission agrees that a policies and procedures approach can also advance the Commission's same-day affirmation objective, the Commission believes that timely settlement is a separate, if related, objective from same-day affirmation. Commission rules have long established the standard for timely settlement, as reflected by the requirements for the standard settlement cycle set forth in Rule 15c6–1. In contrast, Rule 15c6–2, as proposed, seeks to advance the objective of same-day affirmation. As discussed further in Part III.C, the Commission believes that improving affirmation rates on trade date is an objective separate and apart from, if nonetheless related to, shortening the settlement cycle because it promotes an orderly settlement process regardless of the length of the settlement cycle. In the T+1 Proposing Release, the Commission stated that, while proposed Rule 15c6–2 does not require settlement of the transaction on trade date, the requirement for same-day affirmation supports orderly settlement by reducing the likelihood of exceptions or other processing errors that can lead to settlement fails.[252] The Commission recognizes that Rule 15c6–1 already addresses the concept of timely settlement by establishing a standard settlement cycle. As a result, the Commission believes that, while proposed Rule 15c6–2 should be revised to incorporate a policies and procedures approach, the specific objective of same-day affirmation, and not the more general objective of timely settlement, remains the objective that such policies and procedures should be reasonably designed to achieve.

Second, SIFMA suggested that policies and procedures be designed to address the timing of allocations, confirmations, and affirmations to ensure timely settlement.[253] The Commission agrees that addressing the timing of allocations, confirmation, and affirmations on trade date can help advance the objective of same-day affirmation, and, as discussed further in Part III.C below, the Commission is including in the final rule a requirement for policies and procedures to include target time frames on trade date for achieving allocations, confirmations, and affirmations.[254]

Third, SIFMA suggested that policies and procedures be designed to include a communication plan with market

[242] *See* ISITC Letter, *supra* note 29, at 6.

[243] *See* AIMA Letter, *supra* note 29, at 2, 6–7.

[244] *See* ICI Letter, *supra* note 16, at 5–6; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[245] *See* ICI Letter, *supra* note 16, at 7; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[246] *See* ICI Letter, *supra* note 16, at 7; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[247] *See* SIFMA August 26th Letter, *supra* note 207, at 2–3.

[248] *See id.* at 2. In Part III.B.5 above, the Commission has previously discussed why it believes it appropriate to retain the written agreement requirement in the rule, while also adding an option to establish, maintain, and enforce written policies and procedures.

[249] *See id.*

[250] *See id.* at 2–3.

[251] *Id.* at 2.

[252] *See* T+1 Proposing Release, *supra* note 2, at 10454–55.

[253] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[254] *See* Rule 15c6–2(b)(2).

participants.[255] The Commission agrees with this suggestion, and, as discussed further in Part III.C below, the Commission is including in the final rule a requirement for reasonably designed policies and procedures that include the procedures the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation process can be completed by the target time frames on trade date.[256]

Finally, SIFMA suggested that the policies and procedures be designed to provide a description of a broker-dealer's ability to monitor compliance, include the development of controls and supervisory procedures, and include the development of metrics to measure compliance.[257] The Commission also agrees that these elements can ensure that policies and procedures are effective at helping to ensure that allocations, confirmations, and affirmations can be completed on trade date. Accordingly, and as discussed further in Part III.C below, the Commission is including in the final rule similar requirements as those described by SIFMA for reasonably designed policies and procedures that identify and describe any technology systems, operations, and processes used to coordinate with relevant parties to ensure completion of the allocation, confirmation, or affirmation process; [258] describe how the broker-dealer plans to identify and address delays;[259] and measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of trade date.[260]

C. Final Rule and Discussion

After considering the above comments, the Commission continues to believe that implementing a T+1 standard settlement cycle will require significant improvements in the current rates of same-day affirmations to help ensure timely settlement in a T+1 environment.[261] Although the Commission agrees that the incentives identified by commenters in Part III.B.1 exist and help ensure timely settlement, the Commission believes that these incentives alone are insufficient to significantly improve same-day affirmation rates, as required to facilitate shortening the standard settlement cycle to T+1.[262] While data cited in the T+1 Proposing Release indicates that affirmation rates have improved over time, the improvements have been only modest.[263] Currently, despite existing commercial incentives and efforts to establish ''same-day affirmation'' as an industry best practice, only about 68% of trades achieve affirmation on trade date.[264] Because the above incentives and efforts, on their own, have not sufficiently improved the current rate of same-day affirmations, the Commission believes that additional regulatory steps—including establishing a Commission requirement designed to advance the same-day affirmation objective—are needed. In this way, a Commission rule effectively targeted to the same-day affirmation objective can increase the rate of same-day affirmation for several reasons.[265]

First, in the absence of such a rule, the existing incentives identified by commenters tend only to impose substantial costs on the parties if a transaction fails to settle on time (*i.e.,* pursuant to the standard settlement cycle set forth in Rule 15c6–1(a)). However, failing to affirm by the end of trade date increases the likelihood that errors or exceptions will not be resolved in time for settlement. The sooner the parties have affirmed the trade information for their transaction, the lower the likelihood of a settlement fail because the parties will have more time to identify and resolve any potential errors. Second, many institutional transactions are not eligible for netting through the CCP because the relevant securities are held by a custodian bank that is not a CCP participant, and so market participants that use such a custodian do not have the option for—or the accompanying incentive to complete allocations, confirmations, and affirmations by the submission times that would facilitate—netting at the CCP.[266] While industry planning for T+1 does contemplate creating new incentives to specifically induce same-day affirmations by certain cutoff times,[267] even when the transaction will not be submitted to the CCP for netting, the associated costs for failing to meet such cutoff times are likely to be minor in comparison to the costs associated with a failure to settle the transaction.[268] As a result, market participants may not take steps to realize the benefits that accrue from achieving allocations, confirmations, and affirmations on trade date, even when they are subjected to costs that arise from failing to achieve timely settlement. Third, the costs associated with failing to affirm a transaction, or with failing to achieve a buy-in, can be shifted among the parties settling the transaction, reducing the likelihood that these incentives will induce the parties to identify potential improvements to their processes over time because they do not internalize the full costs of failing to complete the allocation, confirmation, and affirmation process on trade date. In addition, because of the costs associated with improving processes and implementing new technologies, these incentives may only induce change when a broker-dealer is engaged in a high volume of

[255] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[256] *See* Rule 15c6–2(b)(3).

[257] *See id.* at 2–3.

[258] *See* Rule 15c6–2(b)(1).

[259] *See* Rule 15c6–2(b)(4).

[260] *See* Rule 15c6–2(b)(5).

[261] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[262] *See* T+1 Report, *supra* note 61, at 13 (highlighting the need for achieving affirmation on trade date and encouraging that affirmations be completed by 9:00 p.m. ET on trade date to facilitate shortening the standard settlement cycle to T+1).

[263] T+1 Proposing Release, *supra* note 2, at 10453 n.156 (citing DTCC, Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle (Dec. 2011), *available at https://www.dtcc.com/en/news/2011/december/01/proposal-to-launch-a-new-costbenefit-analysis-on-shortening-the-settlementcycle.aspx*).

[264] *See* Sean McEntee, Executive Director, ITP Product Management, DTCC, Remarks at the DTCC ITP Forum—Americas (June 17, 2021) (''DTCC ITP Forum Remarks''), *available at https://www.dtcc.com/events/archives*.

[265] *See infra* notes 578–581 and accompanying text (discussing the anticipated economic benefits of Rule 15c6–2 for the rate of same-day affirmations).

[266] NSCC and DTCC ITP jointly offer an optional service called ''ID Net'' for transactions affirmed by DTCC ITP. The service enables broker-dealers who are members of both NSCC and DTC to aggregate and net for delivery purposes their institutional transactions, affirmed via DTCC ITP, with their transactions pending for settlement in NSCC's Continuous Net Settlement (''CNS'') system. *See* DTCC, ID Net, *https://www.dtcc.com/settlement-and-asset-services/settlement/id-net*. Nevertheless, such affirmed transactions are not guaranteed by NSSC and NSCC does not provide any margin offset to the broker-dealers' clearing fund requirements. *See* Exchange Act Release No. 93070 (Sept. 20, 2021), 86 FR 53125 (Sept. 24, 2021) (SR–NSCC–2021–011) (approving NSCC rule change to remove ID Net transactions from required fund deposit calculations).

[267] *See* T+1 Report, *supra* note 61, at 13–14 (for a T+1 settlement cycle, encouraging allocations be complete by 7:00 p.m. ET on trade date and recommending a new affirmation cutoff time of 9:00 p.m. ET on trade date).

[268] Specifically, failing to submit allocation, confirmation, and affirmation data by the cutoff time will likely require a participant to submit the transaction manually to DTC, raising the cost of the transaction. *See infra* note 269 and accompanying text (discussing the different fees that DTC applies depending on the timing or method of submission for settlement). If, a market participant fails to settle the transaction, however, it may be subject to buy-in obligations, whereby the market participant may need to internalize not just the cost of completing the transaction manually but also the cost of replacing the trade to the extent that the market price of the transaction has moved against the market participant since trade execution.

transactions for which errors are recurring and is also internalizing the costs associated with correcting those errors. Otherwise, a broker-dealer and the relevant parties may deploy ''just in time'' solutions, where the allocation, confirmation, and affirmation process is completed on settlement date or never completed, while shifting any higher costs associated with ensuring the timely settlement of the transaction to others.[269]

In proposing a requirement for written agreements, the Commission intended for the relevant parties, through these agreements, to establish more thoughtful and orderly processes—established prior to trade execution—so that the parties to the transaction and their agents would have a shared understanding as to what steps were necessary to ensure that allocations, confirmations, and affirmations could be completed across the range of transactions into which they enter, and what consequences would result if a party (or its agent) failed to provide the necessary allocation, confirmation, or affirmation no later than the end of trade date.[270]

In addition, the Commission believes that it is appropriate to impose obligations on a broker-dealer, even though the broker-dealer is only responsible for its own actions and not for the actions of others under Rule 15c6–2, because the broker-dealer has the ability, in some circumstances, to modify the conduct of the other relevant parties with which the broker-dealer may participate in the allocation, confirmation, and affirmation process to ensure its own compliance with the rule. As a result, the Commission believes that imposing such obligations on broker-dealers can increase the rate of same-day affirmation for institutional transactions,[271] thereby promoting the timely and orderly settlement of securities transactions, because many broker-dealers will have relationships across multiple advisers, custodians, and other types of agents, and therefore can introduce better processes and procedures across a range of different relationships. Although the broker-dealer ultimately may not be in a position to bind the behavior of others,[272] the Commission believes that market participants are generally aligned in support of facilitating same-day allocations, confirmations, and affirmations for their transactions to the greatest extent possible. The Commission believes that same-day affirmation is an important objective that can facilitate an orderly and efficient transition to a T+1 and shorter settlement cycles, and that Rule 15c6–2 will incentivize broker-dealers to identify and deploy effective practices for achieving allocations, confirmations, and affirmations ex ante, thereby improving the rate of allocations, confirmations, and affirmations over time.

As explained in the T+1 Proposing Release, the compliance burden imposed on broker-dealers by Rule 15c6–2 is to have a written agreement in place with its customers that requires that the allocation, confirmation, and affirmation process be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[273] In the Commission's view, even a simple requirement to have an agreement in place can effectively promote same-day affirmation because it helps ensure that the parties to a transaction where allocation, confirmation, or affirmation will occur have agreed in advance of entering the transaction as to the operational arrangements necessary to ensure the allocation, confirmation, or affirmation of the transaction. Rule 15c6–2 would not expose a non-breaching broker-dealer to liability for violating the rule based on the actions of its customer, or customer's agent, provided that the written agreement describes the obligations of the parties to ensure the allocation, confirmation, or affirmation of the transaction, and the broker-dealer itself has complied with its obligations under the written agreement. The Commission understands that commercial relationships between broker-dealers and other parties, such as investment advisers, often describe and, when possible, quantify expectations between the parties as to the timing of and other circumstances affecting the transfer of securities and funds, establishing costs and other terms that may apply if one of the parties to the agreement fails to meet its obligations for a certain threshold of transactions within a certain timeframe. Adding a contractual requirement for the same-day allocation, confirmation, and affirmation of institutional transactions that would be executed and settled as part of such commercial relationship, in the Commission's view, is likely to increase the percentage of transactions for which allocations, confirmations, and affirmations are completed on trade date.

As a general matter, the Commission acknowledges that some of the incentives identified by commenters may better align with the objective of same-day affirmation in a T+1 environment than in a T+2 environment because market participants are likely to endeavor to submit trades that are eligible for netting to the CCP for settlement during a new overnight process planned for the evening of trade date,[274] a process that would be unavailable unless the parties complete trade allocations, confirmations, and affirmations on trade date. As stated by some commenters, the final design of deadlines and related operational requirements at the CCP, and at the industry level more generally, will encourage market participants to improve the rate of allocations, confirmations, and affirmations completed on trade date, as will the shortening of the settlement cycle more generally.[275] Nonetheless, the Commission believes that final Rule 15c6–2, modified as discussed further below, can help ensure that incentives with respect to allocations, confirmations, and affirmations are aligned with timely and orderly settlement, critical to ensuring that the rate of settlement fails remains low as the settlement cycle continues to shorten.[276]

[269] *See, e.g.,* DTCC, Guide to the 2023 DTC Fee Schedule, *https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf* (setting different prices for night deliver orders, day deliver orders, matched institutional trades, and exceptions processing).

[270] To promote such preparation ex ante, the Commission has modified the final rule to enable broker-dealers to pursue a policies and procedures approach as an alternative to written agreements. *See infra* Part III.C.2 (discussing the policies and procedures alternative).

[271] To measure progress on the same-day affirmation objective, the Commission is also adopting a requirement for CMSPs to submit to the Commission an annual report on straight-through processing that is required to include data on the rate of allocations, confirmations, and affirmations, enabling the Commission to measure progress on these metrics over time. *See infra* Part V.C.2.(c) (discussing the data elements required in the annual report, which include data concerning allocations, confirmations, and affirmations).

[272] Nonetheless, brokers do design their fees, in part, to address the risks that they face, including settlement risk. *See infra* notes 567–568 and accompanying text (explaining that broker-dealers set their fees, in part, to manage settlement risks). Broker-dealers may determine to raise the cost of trading for customers that do not facilitate same-day affirmation pursuant to a broker-dealer's written agreements or written policies and procedures, as applicable.

[273] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[274] *See* T+1 Report, *supra* note 61, at 13.

[275] *See supra* Part III.B.1 (discussing these comments).

[276] *See infra* note 272 (discussing the ability of broker-dealers to use their schedule of fees to impose costs on customers or agents thereof that

Continued

On balance, the Commission believes that final Rule 15c6–2, with the modifications discussed below to address specific concerns raised by commenters, will increase the incentive to submit allocations, confirmations, and affirmations on trade date, discouraging ''just in time'' solutions that may jeopardize timely settlement in a T+1 environment. In particular, the Commission believes that ''just in time'' solutions may increase the rate of settlement fails in a T+1 environment because the parties to a transaction will have significantly less time to resolve issues that can prevent settlement, raising the possibility that errors associated with the allocation, confirmation, and affirmation process may delay timely settlement. Improving the rate of same-day affirmations thereby promotes an orderly and efficient settlement process. More generally, as discussed in the T+1 Proposing Release, agreeing to trade information as close in time as is technologically practicable to trade execution helps ensure that any discrepancies in trade details are identified and resolved far enough in advance to ensure timely and orderly settlement.[277] In this way, Rule 15c6–2 can promote an orderly and efficient process in a T+1 environment because it substantially increases incentives for market participants to complete the key task of agreeing to trade information, including the price of the transaction and quantity of shares to be transferred, on trade date.

1. Modifications to Requirement for Written Agreements

The Commission is adopting Rule 15c6–2 with several modifications. First, with respect to the requirement to enter written agreements to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction, the Commission is revising the rule to replace references in the text to ''customer'' with ''relevant parties'' to better align the obligations under Rule 15c6–2 with the market dynamics that currently exist between broker-dealers, their customers, and their customers' use of advisers, custodians, and other third party agents as they participate in post-trade processes, including the allocation, confirmation, and affirmation process.

The Commission believes that this modification helps reduce the likelihood that broker-dealers would need to enter into new agreements with their customers specifically for the purpose of ensuring the same-day affirmation of the transaction. It also removes the need for a broker-dealer to enter into an agreement with its customer specific to same-day affirmation if a third-party, such as an adviser, custodian or other agent of its customer, would be the party to engage with the broker-dealer to ensure the allocation, confirmation, or affirmation of the transaction. As discussed in the T+1 Proposing Release,[278] the Commission intended for ''customer'' to include the relevant parties to a transaction that would participate in the allocation, confirmation, and affirmation process and would include the customer, the customer's investment adviser, the customer's custodian, or any other agent acting (directly or indirectly) on behalf of the customer. The modification helps ensure that, when a broker-dealer is considering whether and with which entities to enter into written agreements, the broker-dealer needs to identify only the relevant party or parties that will have a role or roles in completing the allocation, confirmation and affirmation process. The Commission also believes that this modification helps ensure that Rule 15c6–2 is appropriately designed to impose a written agreement requirement where a written agreement is practical and can help ensure the same-day affirmation of a transaction, even if many broker-dealers may ultimately choose to implement the rule through the policies and procedures alternative discussed in Part III.C.2.

The Commission's understanding is that, even if such party is not the broker-dealer's own customer, some broker-dealers may choose to enter into commercial agreements with such other relevant parties in order to support their customer relationships, collect fees, and otherwise facilitate the operational processes necessary to complete and settle the transaction. Rule 15c6–2 does not require, however, that a broker-dealer enter into written agreements with parties that do not have a role in the allocation, confirmation, and affirmation process. For example, if a broker-dealer is acting in the capacity of an executing broker on behalf of a customer and another broker-dealer will take responsibility for completing the allocation, confirmation, and affirmation process with the relevant parties to settle the transaction (a ''clearing broker'' in this context), then the executing broker need only comply with the rule to the extent that it participates in the allocation, confirmation, and affirmation process. An executing broker that does not participate in such processes would face no obligations under the rule. If an executing broker does undertake certain obligations with respect to its customer, such as may be delineated in its commercial arrangements with the relevant clearing broker, then under Rule 15c6–2 such a broker-dealer generally should ensure that its arrangements with the clearing broker identify that the clearing broker will be the broker-dealer ''engaging in the allocation, confirmation, and affirmation process'' for compliance with Rule 15c6–2. If the executing broker and the clearing broker do not have written agreements that establish the commercial relationship between them, then the executing broker generally should consider whether it needs to establish, implement, and maintain policies and procedures to identify and explain its role and its relationship with the clearing broker, consistent with Rule 15c6–2(a)(2), discussed in Part III.C.2. In contrast to an executing broker—which may not participate in the allocation, confirmation, and affirmation process—the clearing broker that facilitates the settlement of the transaction, and thereby participates in the allocation, confirmation, and affirmation process, would need to comply with Rule 15c6–2.

Second, the Commission is making other technical changes to the written agreements requirement to simplify the rule text and to accommodate the new alternative for broker-dealers to establish, maintain, and enforce written policies and procedures to ensure completion of the allocation, confirmation and affirmation as soon as technologically practicable and no later than the end of the day on trade date.[279] The Commission is removing the prohibition language in the rule (*i.e.,* ''No broker or dealer . . . shall'') and replacing it with an affirmative obligation (*i.e.,* ''A broker or dealer shall'').

In addition, the Commission has removed language that paralleled the language in Rule 15c6–1 regarding the scope of affected securities under the rule (''a contract for the purchase or sale

prevent completion of the allocation, confirmation, and affirmation process on trade date).

[277] *See* T+1 Proposing Release, *supra* note 2, at 10454–55.

[278] *See* T+1 Proposing Release, *supra* note 2, at 10454; see also Part III.A.

[279] *See infra* Part III.C.2 (discussing the policies and procedures alternative in Rule 15c6–2(a)(2)).

of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills)''). The Commission has replaced the proposed language with a cross reference to the rule (*e.g.,* ''a securities transaction that is subject to the requirements of § 240.15c6–1(a)''). The purpose of this change is to simplify the rule text and ensure that the scope of transactions relevant to compliance with Rule 15c6–2 remains consistent with the scope of transactions under Rule 15c6–1(a). The scope of transactions remains unchanged from the proposed rule, as discussed in the T+1 Proposing Release, and is the same scope of transactions as those covered by Rule 15c6–1(a) for which the broker-dealer will engage in the allocation, confirmation, or affirmation process with another party.[280]

Finally, as discussed further in Part III.C.2, the Commission is modifying proposed Rule 15c6–2 to provide two options by which broker-dealers may comply with the rule, as adopted. The two options are set forth in new paragraphs (a)(1) and (2). The first option, reflected in paragraph (a)(1), is the proposed requirement for written agreements, modified in the ways discussed above. The second option, reflected in paragraph (a)(2), provides an alternative to the written agreements requirement, where, in lieu of a written agreement, a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

While the Commission believes that a policies and procedures approach can relieve the parties to an institutional transaction from the burden of negotiating a written agreement where one does not exist, the Commission believes that the written agreement requirement may be useful to those broker-dealers that have already established written agreements that govern the operational arrangements for certain commercial relationships. Specifically, such broker-dealers that already have written agreements in place to manage their commercial relationships with their customers' advisers, custodians or other agents may find it efficient to revise these written agreements to comply with Rule 15c6–2. Even where written agreements do not currently exist, if the relevant parties are amenable to entering into a written agreement to manage their responsibilities under the allocation, confirmation, and affirmation process, a broker-dealer may find that such agreement is an effective tool for identifying the circumstances and operational arrangements that the relevant parties ought to negotiate and agree to ensure the same-day allocation, confirmation and affirmation of the transaction, in a similar way that developing policies and procedures would also identify and describe the circumstances and operational arrangements for each relevant relationship that would be necessary to ensure the completion of allocations, confirmations and affirmations.

Ultimately, the written agreement requirement is designed to achieve the same goals as the alternative policies and procedures requirement, and broker-dealers may elect to comply with the alternative that they believe is better suited to their existing operations, specific business model, customer base, securities offered for settlement, and commercial relationships. In some cases, because written agreements would be individually tailored to a specific commercial relationship, they may help broker-dealers and the other relevant parties to an institutional transaction develop innovations that improve the allocation, confirmation, and affirmation process. Nonetheless, as previously discussed, the Commission acknowledges that the costs and challenges of negotiating a written agreement with the relevant parties may lead broker-dealers to choose to implement the rule via the policies and procedures requirement.

In addition, the Commission believes that replacing the term ''customer'' with ''other relevant parties'' and to add an option to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of allocations, confirmations, and affirmations addresses the comments regarding use of third parties discussed in Part III.B.4.[281] First, the modifications ensure that the requirements apply not to the broker-dealer and its customer but instead to the broker-dealer and the relevant parties that ensure the completion of the allocation, confirmation, and affirmation process. Such parties may be the customer, the customer's investment adviser, the customer's custodian, or another agent acting directly or indirectly on behalf of the customer.[282] Second, where the adviser is the relevant party with whom the broker-dealer will engage to complete the allocation, confirmation, or affirmation process, then the broker-dealer may seek either to establish a written agreement to ensure compliance with the rule, or the broker-dealer may instead choose to establish, maintain, and enforce policies and procedures under the rule. In the latter case, the broker-dealer may still seek to establish arrangements with the relevant parties to achieve compliance with the rule.[283]

2. New Policies and Procedures Alternative to Written Agreements Requirement

As previously discussed, the Commission is modifying proposed Rule 15c6–2 to enable a broker-dealer either to (1) enter into written agreements or (2) establish, maintain, and enforce reasonably designed written policies and procedures to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable and no later than the end of the day on trade date, in such form as necessary to achieve settlement. The Commission is providing broker-dealers with this discretion under the rule to allow broker-dealers to select the approach that best aligns with their existing business practices and customer relationships, and to consider the approach that best enables the broker-dealer to ensure the completion of allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of the trade date.

In response to the concerns raised by commenters in Part III.B.5, the

[280] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[281] Such policies and procedures would be required to include the elements described in Part III.C.3 below.

[282] *See supra* notes 205–206 and accompanying text (describing the same).

[283] For example, consistent with the requirements of Rules 15c6–2(b)(3) and (4), as discussed further in Part III.C.3, policies and procedures would be required to, under paragraph (b)(3) describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date, and, under paragraph (b)(4), describe how the broker or dealer plans to identify and address delays if another party (such as an investment adviser or a custodian) is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation. It may be useful for broker-dealers to engage with the relevant parties to the allocation, confirmation, and affirmation process regarding the nature of these communications.

Commission generally agrees that requiring policies and procedures as an alternative approach to compliance, separate from entering into written agreements, provides broker-dealers with more flexibility to achieve same-day affirmation. As a general matter, the Commission believes that the policies and procedures alternative in Rule 15c6–2 can help ensure that, when the parties to a transaction encounter obstacles that may prevent them from completing an allocation, confirmation, or affirmation on trade date, they have policies and procedures to navigate, address, and when possible mitigate or overcome such obstacles.[284] The Commission also acknowledges that, in cases where written agreements do not already exist, a requirement to enter into such agreements specifically to achieve same-day affirmations may create substantial burdens and challenges. Such challenges may include, for example, a client who chooses not to authorize its investment adviser to enter into such agreement or circumstances where multiple third parties are relied upon to complete elements of the allocation, confirmation, and affirmation process. Similarly, in the context of RVP/DVP transactions discussed in Part III.B.5, while some broker-dealers that regularly engage in RVP/DVP transactions may choose to enter into commercial agreements with their counterparties or agents of their counterparties to help facilitate this process, not all do and may instead rely on a combination of best practices, relationship management, and the obligations imposed by Commission or SRO rules as a substitute for a formal written agreement among the parties necessary to ensure the allocation, confirmation, and affirmation of the transaction. For those broker-dealers who do choose to enter into such agreements, the requirement for written agreements can be an effective and efficient mechanism for advancing the same-day affirmation requirement because it enables them to leverage their existing operational arrangements already established under the written agreements to codify the steps that the parties will take to ensure the same-day affirmation of transactions executed pursuant to the agreement. Nonetheless, the Commission also believes that an alternative policies and procedures requirement will help relieve broker-dealers of the burdens and challenges that, in some cases, may arise if broker-dealers are required to enter into new written agreements specifically for the purpose of facilitating same-day affirmation.[285] The Commission recognizes that, in response to this modification, and due to the costs and challenges of entering into written agreements identified by commenters generally, nearly all broker-dealers that do not already have written agreements may choose to implement the rule through the policies and procedures requirement rather than the written agreement requirement.[286]

Regardless of the alternative chosen, the Commission recognizes that same-day affirmation still may not be achievable in all circumstances due to particular obstacles associated with the transaction, including the time of the transaction, the time zone in which a party to the transaction resides, and/or variations in local holidays.[287] The difficulty associated with achieving a same-day affirmation will necessarily vary depending on the types of transactions entered, the locations of the parties, and the sophistication of their operational arrangements. The Commission also generally agrees with commenters that requiring policies and procedures as an alternative approach to compliance, separate from entering into written agreements, provides broker-dealers with more flexibility to achieve same-day affirmation while also avoiding the substantial burdens and challenges that, in some cases, may result from having to enter into written agreements specifically to address the same-day affirmation objective.

Whatever approach the broker-dealer determines is most appropriate for its circumstances and set of relationships, the Commission believes that either written agreements or policies and procedures can be structured to address challenges associated with the timing considerations raised by the commenters. Where commercial relationships exist, for example, the parties retain the ability to specify in their written agreements what steps are appropriate to ensure that allocations, confirmations, and affirmations can be completed on trade date. They can choose to specify how to accelerate the process to accommodate end of day trading, as well as how to staff their operations to ensure that the parties are available to complete allocations, confirmations, and affirmations across multiple time zones and, when needed, to plan for and accommodate local holidays. In some cases, depending on the business model and scope of relationships that a broker-dealer employs to complete allocations, confirmations, and affirmations, establishing, maintaining, and enforcing written policies and procedures may be a more effective tool for navigating the challenges that may occur for some end-of-day transactions and transactions across multiple jurisdictions. For example, to be reasonably designed, policies and procedures generally should address the steps that would be taken in response to known obstacles to same-day affirmation, such as when transactions are entered at the end of the trading day, transactions where one or both parties operate in other jurisdictions, and circumstances where local holidays or different time zones may limit the ability of the parties to communicate. Where the parties cannot reach agreement on these matters in their written agreements, reasonably designed policies and procedures generally should establish the steps that a broker-dealer would take to accommodate multiple time zones and local holidays, and how the broker-dealer would plan to accelerate its processes to ensure the completion of allocations, confirmations, and affirmations for transactions entered near the end of day. Written agreements and reasonably designed policies and procedures could also clearly define, for example, circumstances to avoid, or acceleration procedures to follow, when a same-day affirmation may otherwise be difficult to achieve because of potential timing constraints.

For broker-dealers that maintain written agreements, such written agreements often establish thresholds or expectations regarding the completion of certain operational processes, and such agreements could incorporate thresholds or expectations with respect to end-of-day trading, time zones, and local holidays. When time pressures are especially difficult, the parties could negotiate acceleration procedures to complete allocations, confirmations, and affirmations on trade date. When this is not possible, a broker-dealer's

[284] For example, reasonably designed policies and procedures generally could include robust compliance and monitoring systems; processes to escalate identified instances of noncompliance for remediation; procedures that designate responsibility to business line personnel for supervision of functions and persons; processes for escalating issues; processes for periodic review and testing of the adequacy and effectiveness of policies and procedures; and training on policies and procedures. The Commission discusses the specific elements required of reasonably designed written policies and procedures under Rule 15c6–2(b) in Part III.C.3.

[285] *See supra* Part III.B.1 and *infra* Part III.B.7.

[286] For purposes of estimating the Paperwork Reduction Act (''PRA'') burdens under Rule 15c6–2, the Commission has assumed that all respondent broker-dealers will implement the rule through the policies and procedures requirement. *See infra* Part IX.C.

[287] *See supra* Part III.B.6 (discussing comments expressing concerns about these obstacles).

policies and procedures generally should establish target time frames on trade date for completing allocations, confirmations, and affirmations and describe how the broker-dealer plans to identify and address delays. The Commission is also including in the final rule a requirement that policies and procedures specify the procedures the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure completion of the allocation, confirmation, and affirmation by the target time frames on trade date.

In this regard, the Commission does not believe the rule, as modified, incentivizes the parties to cancel trades because a broker-dealer would not be in violation of Rule 15c6–2 by failing to achieve the allocation, confirmation, or affirmation on trade date for a single trade unless it had failed to either enter into written agreements or establish, maintain, and enforce reasonably designed policies and procedures consistent with the rule. With respect to policies and procedures under Rule 15c6–2, the Commission believes that maintaining and enforcing such policies and procedures means that a broker-dealer generally should ensure that it has designed its own systems and operations, and deployed sufficient resources to address, any potential systemic failures within its own process.[288]

In addition, while the Commission specifies in Part III.C.3 several elements that such policies and procedures must include to be reasonably designed under Rule 15c6–2 (*e.g.,* identification and description of technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties to ensure completion of the allocation, confirmation, or affirmation process for the transaction), the Commission has not included in the rule similar elements to be required of written agreements, allowing a broker-dealer flexibility to negotiate and draft written agreements with the other parties and, potentially, to explore innovative methods for ensuring the allocation, confirmation, and affirmation of the transaction where unique operational arrangements specific to a given commercial relationship may enable new or specific approaches. Because written agreements are subject to negotiation with the other relevant parties, they are likely to consider a range of commercial interests that derive from the relationship between the parties.

The Commission is not requiring investment advisers to adopt similar policies and procedures because investment advisers will not always be among the relevant parties completing the allocation, confirmation, and affirmation. An adviser that enters into a Rule 15c6–2 agreement with a broker-dealer, or transacts with a broker-dealer that has policies and procedures reasonably designed to ensure timely completion of the allocation, confirmation, affirmation processes pursuant to the requirements of Rule 15c6–2, may, as a best practice, wish to evaluate whether its policies and procedures are sufficient to ensure compliance with such agreement or other obligations requested by the broker-dealer.

3. Elements of Reasonably Designed Policies and Procedures

The Commission believes that a policies and procedures approach can be an effective tool for ensuring the completion of allocations, confirmations, and affirmations so long as they consider holistically the broker-dealer's available set of tools, responsibilities to the relevant parties, ability to communicate and resolve issues among the parties for a given transaction, and provide a mechanism for tracking progress over time. With these objectives in mind, and to ensure policies and procedures are effective at achieving the stated objective, the Commission is adding new paragraph (b) to Rule 15c6–2 to specify the elements that such policies and procedures should include, as discussed further below.

First, the Commission is requiring under paragraph (b)(1) that policies and procedures be reasonably designed to identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction. The purpose of this provision is to ensure that the broker-dealer considers holistically the range of systems and tools it has available to facilitate the same-day affirmation objective, as well as the range of operations and processes that a broker-dealer uses to facilitate same-day affirmations across different customer and commercial relationships. In this way, such policies and procedures can establish whether and when different processes are necessary to facilitate same-day affirmations because certain transactions or customer types require different arrangements. For example, a broker-dealer may have a specific policy or operational arrangement that addresses allocations, confirmations, and affirmations for a customer whose securities are held by a prime broker versus a customer whose securities are held by a bank custodian. A broker-dealer generally should also seek written assurances from advisers or custodians to help ensure that they understand and internalize their respective roles in facilitating completion of the allocation, confirmation, and affirmation process.[289] Similarly, the broker-dealer may require different arrangements for a customer who engages directly with the broker-dealer versus a customer whose investment adviser or custodian engages with the broker-dealer on its behalf. The broker-dealer may also require different systems, operations, or processes to manage customer relationships where the other relevant parties to the transaction operate in other time zones or jurisdictions. Consistent with paragraph (b)(1), reasonably designed policies and procedures are required to identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties (such as investment advisers and custodians) to ensure completion of the allocation, confirmation, or affirmation process for the transaction. To be reasonably designed, such policies and procedures would need to categorize and assess the range of operational arrangements and processes that would be used to facilitate the allocation, confirmation, and affirmation process across the full range of different customer and

[288] *See supra* note 284 (also discussing several processes that policies and procedures generally could include to promote the objectives of the Rule 15c6–2).

[289] As stated in Part III.C.2, the Commission is not requiring investment advisers to adopt policies and procedures similar to those in Rule 15c6–2(b) because investment advisers will not always be among the relevant parties completing the allocation, confirmation, and affirmation. However, an adviser that transacts with a broker-dealer that has policies and procedures pursuant to Rule 15c6–2 may wish to evaluate whether its own policies and procedures are sufficient to ensure compliance with obligations requested by the broker-dealer. Where an adviser transacts with such a broker-dealer, the broker-dealer's policies and procedures may provide that it generally should seek written assurances from the adviser that its policies and procedures are sufficient to ensure compliance with obligations requested by the broker-dealer. Similarly, where a custodian participates in the allocation, confirmation, or affirmation process with such a broker-dealer, the broker-dealer's policies and procedures may provide that it generally should seek written assurances that the custodian would comply with obligations requested by the broker-dealer.

transaction types for which it offers services.

Second, the Commission is requiring under paragraph (b)(2) that policies and procedures be reasonably designed to set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction. As discussed above, the Commission remains mindful that a broker-dealer may not be able to complete the allocation, confirmation, and affirmation process on the trade date with respect to every transaction it executes for every customer in every circumstance. Thus, Rule 15c6–2 requires policies and procedures that set target time frames on trade date for completing the allocation, confirmation, and affirmation for transactions. The broker-dealer must also enforce its policies and procedures, including those related to target time frames, for the range of transaction and customer types it serves, as well as the range of systems and operational processes it might employ. For example, for highly automated transactions with high volume customers with direct control over their securities located in the same time zone, reasonably designed policies and procedures would set target time frames for completing the allocation, confirmation, and affirmation of the transaction very close in time to trade execution (*i.e.,* as soon as technologically practicable). For transactions that are more complex, such as those where a customer or its agent operates in other time zones or jurisdictions, or a separate custodian maintains securities or cash accounts on the customer's behalf, a broker-dealer may consider how to structure the time frames to accommodate the level of effort that will be necessary to complete the allocation, confirmation, and affirmation. Pursuant to Rule 15c6–2(b)(1), reasonably designed policies and procedures would be able to categorize the range of transactions and customer relationships that it has established and estimate the length of time it takes to complete each of the allocation, confirmation, and affirmation to set its target time frames. As discussed in Part III.B.1, a broker-dealer is required to enforce its policies and procedures, meaning that it is obligated to design its systems and commit the necessary resources to ensure that it can comply with its own policies and procedures under the rule.

Third, the Commission is requiring under paragraph (b)(3) of Rule 15c6–2 that policies and procedures be reasonably designed to describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date. Although target time frames will not always be met, and although affirmations will not always be complete on trade date, a broker-dealer is required to enforce its policies and procedures under Rule 15c6–2, and so reasonably designed policies and procedures would need to ensure that an action fully within the broker-dealer's own control is not preventing the completion of the allocation, confirmation, or affirmation for the transaction. Thus, paragraph (b)(3) of the rule requires that policies and procedures lay out the ex ante steps that the broker-dealer will take to promptly communicate trade information, as well as to investigate discrepancies and adjust trade information in response to information the broker-dealer receives.

Fourth, the Commission is requiring under paragraph (b)(4) of Rule 15c6–2 that policies and procedures be reasonably designed to describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation. As with paragraph (b)(3) of the rule, the purpose of paragraph (b)(4) is to ensure, to the greatest extent possible, that the broker-dealer is not the source of delay in completing the allocation, confirmation, and affirmation process. As such, pursuant to paragraph (b)(4), the broker-dealer should establish ex ante the steps that it would take in attempting to obtain an allocation or affirmation from its customer or the other relevant parties to the transaction (such as investment advisers or custodians). In the Commission's view, broker-dealers generally should take reasonable steps to escalate issues with their customers, or the other relevant parties acting on their customers' behalf, to resolve issues and meet the target time frames set forth in the broker-dealer's policies and procedures. In addition, the broker-dealer's policies and procedures generally should identify the circumstances under which a broker-dealer may experience delays in promptly completing the confirmation and what steps it would take to resolve the delay. In addition, because a broker-dealer is required to enforce its policies and procedures, the Commission believes that it should consider having policies and procedures that explain what efforts it would take to resolve recurring problems, particularly if they recur with respect to one particular counterparty, customer, or custodian that, for example, routinely fails to meet the broker-dealer's targets.

Finally, the Commission is requiring under paragraph (b)(5) of Rule 15c6–2 that policies and procedures be reasonably designed to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed within the target time frames established under paragraph (b)(2) of the rule, as well as the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of trade date. The purpose of this requirement is to ensure that each broker-dealer is taking steps to identify when allocations, confirmations, and affirmations are completed, whether those completed actions occurred within the target time frames established pursuant to paragraph (b)(2), and if not, whether those allocations, confirmations, and affirmations were completed on trade date. In designing its policies and procedures, a broker-dealer generally should consider defining what operational processes and time frames would enable a transaction to be completed as soon as technologically practicable, so that a broker-dealer can assess the rate of transactions that are allocated, confirmed, and affirmed as soon as technologically practicable on trade date. While Rule 15c6–2 does not require that same-day affirmation occur for every transaction that a broker-dealer executes and settles, for policies and procedures to be effective, the broker-dealer generally should have a sense for how well its policies and procedures ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of trade date. Metrics developed in response to paragraph (b)(5) generally should be used by the broker-dealer to identify and assess the circumstances under which allocations, confirmations, and affirmations are less likely to be achieved as soon as technologically practicable and no later than the end of trade date so that policies and procedures are updated and revised over time with improvements. This would help ensure that the broker-dealer is effectively maintaining and enforcing its policies and procedures, as required by the rule.

4. Use of Defined Terms Other Than ''Customer''

The Commission has previously discussed modifications to Rule 15c6–1(a) to address concerns about use of the term ''customer'' in the rule. After considering the comments regarding definitions of other terms discussed in Part III.B.3, the Commission continues to believe that the terms ''allocation,'' ''confirmation,'' ''affirmation,'' and ''end of the day on trade date,'' are widely used by the industry and are sufficiently understood to facilitate compliance with the rule.[290] The T+1 Proposing Release explained the commonly understood meanings of these terms.[291] Importantly, the specific application of these concepts may vary in different operational arrangements, and ultimately the parties to a transaction must all share a common understanding of their meaning to effectively complete the allocation, confirmation, or affirmation process and the settlement of the transaction. Therefore, the Commission is not revising Rule 15c6–2 to define the terms ''allocation,'' ''confirmation,'' ''affirmation,'' ''end of the day on trade date,'' or ''trade'' for purposes of the rule.

When a broker-dealer will use written agreements under Rule 15c6–2(a)(1), the Commission believes that the parties generally should retain discretion to negotiate terms and expectations that are consistent with their specific operational arrangements and processes, and such negotiations will be most effective without defining terms that, when they do vary in their meaning, do so because they have been defined in the context of the operational arrangements established to facilitate the affirmation and settlement of the trade. When a broker-dealer determines to establish, maintain, and enforce policies and procedures consistent with Rule 15c6–2(a)(2), the broker-dealer may choose to define these terms, and any other terms relevant to the same-day affirmation objective, either in coordination with the relevant parties to the written agreement or in its policies and procedures, to help ensure that all the relevant parties have a shared understanding of these generally understood terms.

5. No Requirement To Link Settlement Instructions to Affirmations

Regarding the comment discussed in Part III.B.2, the Commission is declining to modify Rule 15c6–2 to require that the sending of settlement instructions be linked to completion of the affirmation. As first discussed in the T+1 Proposing Release, the Commission believes that same-day affirmation reduces the likelihood of exceptions or other processing errors that can prevent a transaction from achieving timely settlement.[292] While completing the affirmation on trade date is an indicator that a trade is ready for settlement, it does not necessarily mean that the trade can or will settle on a timely basis. For example, the relevant parties to the transaction may still need to take additional steps to facilitate settlement, such as ensuring that securities and funds are available in the relevant accounts, after the affirmation has been received. Accordingly, the Commission believes that it may not be appropriate in every circumstance to link the sending of settlement instructions with the receipt of an affirmation because this would not necessarily accommodate taking of these additional steps necessary to ensure timely settlement. Nonetheless, the Commission has a strong interest in advancing the objective of straight-through processing,[293] and one effect of increasing the adoption of straight-through processing techniques over time may be that, for certain transactions, the parties may determine to link the sending of settlement instructions with the submission of a completed affirmation to facilitate the efficient and timely settlement of the transaction without unnecessary manual intervention.[294]

In addition, the Commission understands that the customer or the customer's custodian generally retains discretion to determine under what circumstances it is appropriate to link the transmission of settlement instructions to the receipt of an affirmation. The Commission is mindful that Rule 15c6–2 only applies to broker-dealers, and, as such, the Commission believes that the linking of settlement instructions with the completion of the affirmation would likely require the cooperation of the custodian in many cases. For this reason, the Commission is not modifying the rule to include a requirement for linking the transmission of settlement instructions to the receipt of an affirmation. Nonetheless, a broker-dealer could, either in its written agreements or in its policies and procedures, set parameters for engaging with its customer or its customer's custodian for the linking of settlement instructions to the completion of the affirmation.

IV. Advisers Act Rule 204–2—Investment Adviser Recordkeeping

A. Proposed Amendments to Rule 204–2

Under the Commission's proposed Rule 15c6–2, for contracts where parties agreed to engage in an allocation, confirmation, or affirmation process, a broker-dealer would have been prohibited from effecting or entering into a contract for the purchase or sale of certain securities on behalf of a customer unless it entered into a written agreement with the customer that required the allocation, confirmation, affirmation, or any combination thereof to be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with proposed Rule 15c6–1(a). To the extent that investment advisers were party to these agreements, the Commission would have required the adviser to retain related records.[295] Specifically, the Commission proposed to amend Rule 204–2 under the Advisers Act by adding a requirement that if the adviser is a party to a contract under proposed Rule 15c6–2, it must make and keep records of each confirmation received, and any allocation and each affirmation sent, with a date and time stamp for each allocation (if applicable) and affirmation that indicates when the allocation or affirmation was sent to the broker or dealer.[296]

B. Comments

While commenters generally did not oppose the recordkeeping requirement regarding confirmations, allocations, and affirmations, a number of commenters suggested certain modifications or clarifications. One commenter opposed proposed Rule 15c6–2's contract requirement but nonetheless supported the recordkeeping of allocations, confirmations, and affirmations, stating that ''such recordkeeping, coupled with the amendments to the settlement cycle rule, should suffice to achieve the Commission's policy objectives without imposing additional burdensome

[290] *See* T+1 Proposing Release, *supra* note 2, at 10453–54.

[291] *See id.*

[292] *See* T+1 Proposing Release, *supra* note 2, at 10454.

[293] *See infra* Part V (discussing the importance of advancing the objective of straight-through processing and adopting new Rule 17Ad–27).

[294] *See infra* Part V.C.1 (discussing the relationship between policies and procedures for straight-through processing at CMSPs and the use of manual processes to complete the settlement of securities transactions).

[295] *See* T+1 Proposing Release, *supra* note 2, at 10456 (discussing proposed Rule 204–2(a)(7)(iii)).

[296] *Id.*

documentation requirements.'' [297] Another commenter sought clarification regarding an adviser's ability to rely on third parties to meet its recordkeeping obligations for allocations, confirmations, and affirmations.[298] One commenter objected to the proposed amendments to Rule 204–2 on the grounds that neither they, nor proposed Rule 15c6–2, were necessary for the transition from to T+2 to T+1 and should not be adopted.[299]

C. Final Rule and Discussion

The Commission is amending the investment adviser recordkeeping rule to require registered investment advisers to make and keep records of confirmations they receive and of allocations and affirmations they send or receive for any transaction that is subject to the requirements of Rule 15c6–2(a).[300] Specifically, the Commission is amending Rule 204–2(a)(7)(iii) under the Advisers Act to require investment advisers registered or required to be registered under section 203 of the Advisers Act to make and keep true, accurate and current certain records with respect to any transaction that is subject to the requirements of Rule 15c6–2(a), specifically those transactions where a broker-dealer engages in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6–1(a). The required records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. As with other records required under Rule 204–2(a)(7), advisers will be required to keep originals of written confirmations received, and copies of all allocations and affirmations sent or received, but may maintain records electronically if they satisfy certain conditions.[301] The final amendments to Rule 204–2 largely reflect, with certain modifications, the approach in the Proposal.

Requiring the retention of these records is important for the Commission staff's use in its regulatory and examination program and will be helpful to monitor the transition from T+2 to T+1. The Commission disagrees with a commenter that argued the proposed amendments to Rule 204–2 and proposed Rule 15c6–2 are not necessary for the transition from to T+2 to T+1. The Commission believes that the timing of communicating allocations to the broker or dealer is a critical pre-requisite to help ensure that confirmations can be issued in a timely manner, and affirmation is the final step necessary for an adviser to acknowledge agreement on the terms of the trade or alert the broker or dealer of a discrepancy. The Commission believes the recordkeeping requirements for investment advisers should help establish that obligations of the various parties involved in the settlement process related to achieving a matched trade have been met. Moreover, the amendments to Rule 204–2 are intended to reduce risk following the transition to T+1 by improving affirmation rates.

The final amendments to Rule 204–2 apply the new recordkeeping requirements to all registered advisers for any transaction that is subject to the requirements of Rule 15c6–2(a). Although the proposed recordkeeping requirements would have applied to any registered adviser that is a party to a contract under proposed Rule 15c6–2, final Rule 15c6–2 includes a second ''policies and procedures'' option for a broker-dealer engaging in a transaction subject to Rule 15c6–1(a). Despite this change, paragraph (a) of the final Rule 15c6–2 applies to the same subset of transactions to which proposed Rule 15c6–2 would have applied, and, accordingly, the final amendments are designed to keep the scope of the final recordkeeping requirements the same as proposed.[302] The Commission believes that requiring registered advisers to make and keep records of confirmations received, and allocations and affirmations sent or received with respect to these transactions supports the Commission's policy objectives to ensure that the transaction process is completed and trades timely settle on T+1. In addition, instead of requiring advisers to make and keep copies of allocations *or* affirmations *sent* and date and time stamps showing when they were *sent to the broker or dealer,* as proposed, the final rule will include allocations *and* affirmations that are *sent* or *received* and require date and time stamps showing when they were *sent* or *received* to clarify the rule text from the proposal. Finally, instead of requiring ''a date and time stamp for each allocation *(if applicable)*'' (emphasis added), the Commission removed ''if applicable'' to clarify that a date and time stamp should be included for each allocation sent. These changes are designed to cover circumstances where an adviser receives a copy of allocations or affirmations from a third party, such as a custodian or sub-adviser or other party involved in the transaction, and require a date and time stamp in each case.

Based on staff experience as discussed in the T+1 Proposing Release, as well as the comments received, the Commission believes that majority of advisers that place the order for execution—or sub-advisers or other third parties acting on an adviser's behalf—make and keep originals and/or electronic copies of allocations, confirmations, and affirmations sent or received.[303] Advisers, which have varied trade allocation processes, often allocate trades through the use of internal systems, portfolio management systems and order management systems.[304] Some advisers, however, may not make and keep these records or may only retain them on paper. In many cases, affirmation is performed by the asset owner's custodian (or its prime broker) on the asset owner's behalf.[305] In response to a comment received, the Commission is confirming that an adviser may rely on a third party to make and keep the required records, although using a third party to make and keep records does not reduce an adviser's obligations under Rule 204–2. As discussed above, in recognition of the role of third parties, the Commission is requiring advisers to keep records of allocations or affirmations *sent* or *received,* in the event that the adviser

[297] ICI Letter, *supra* note 16, at 5 n.15.

[298] *See* IAA April Letter, *supra* note 16, at 5–6.

[299] *See* Fidelity Letter, *supra* note 16, at 5.

[300] *See* Rule 204–2(a)(7)(iii).

[301] *See* Rule 204–2(a)(7) (requiring making and keeping originals of all written communications received and copies of all written communications sent by an investment adviser relating to the records listed thereunder); *but see* Rule 204–2(g) (permitting advisers to maintain records electronically if they establish and maintain required procedures).

[302] Consistent with the T+1 Proposing Release, we estimate that certain investment advisers registered with the Commission will not be required to make and keep the required records because they do not have any institutional advisory clients and therefore will not facilitate transactions subject to Rule 15c6–2(a). *See* T+1 Proposing Release, *supra* note 2, at nn.424–425 and related text (estimating that certain advisers registered with the Commission would not be required to make and keep the proposed required records because they do not have any institutional advisory clients and therefore would not enter into a contract under proposed Rule 15c6–2).

[303] *See* T+1 Proposing Release, *supra* note 2, at 10457; *see also* IAA April Letter, *supra* note 16, at 4–7; ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

[304] *See* IAA April Letter, *supra* note 16, at 4.

[305] *See* DTCC ITP Forum Remarks, *supra* note 264 (stating that up to 70% of institutional trades are affirmed by custodians); IAA April Letter, *supra* note 16, at 4 (agreeing that 70% of adviser trades are affirmed by the custodian, consistent with information received from its members); *see also* ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

receives a copy of such records from a third party.

As stated in the T+1 Proposing Release, based on staff experience, the Commission believes many records are already consistently date and time stamped to the nearest minute using either a local time zone or a centralized time zone, such as coordinated universal time, or ''UTC.'' [306] The final amendments to Rule 204–2 require advisers to time and date stamp each allocation and affirmation.

The three commenters that discussed the proposed time and date stamping requirement for allocations and affirmations did not oppose the proposed time and date stamping requirements, although some sought clarification regarding how the requirement would be applied in practice.[307] One commenter observed that storing timestamps of processing events such as the generation or receipt of messages is a good practice that provides opportunities to analyze specific points of latency and contributes to an accurate audit trail.[308] This commenter also stated that electronic communication protocols inevitably include storage of complete event history with timestamps. Another commenter, while stating that time stamps are employed today, interpreted our proposal to require a single, industry-approved time stamp format based on a common clock, indicating such an approach would be challenging.[309] This commenter raised other questions, such as what is end of trade date in regard to time stamping, and suggested that timestamps for processes that occur post-midnight ET may incorrectly identify properly affirmed trades as non-compliant.[310] Another commenter suggested that the T+1 Proposing Release significantly underestimated the system and process changes that will be required and that the proposed requirement for advisers to timestamp certain trading records would add further complexity and costs to managers' efforts.[311]

Although the Commission previously stated in the T+1 Proposing Release that the adviser generally should time and date stamp records of allocations and affirmations to the nearest minute,[312] the Commission agrees with commenters that imposing more prescriptive requirements such as an agreed time stamp could result in additional challenges. The Commission is not adopting any such requirements for the time and date stamp format in Rule 204–2 or requiring that the format used be based on a common clock. This approach is designed to provide flexibility to date and time stamp allocations and affirmations in accordance with existing processes and industry practices, while still providing information about when allocations or affirmations were sent or received. This approach also avoids the need for prescriptive guidance about what end of trade date means, requiring everyone to handle different time zones in the same way, and any related costs incurred to follow such guidance.

Requiring these records, including a time and date stamp of all affirmations and allocations (but not confirmations), will aid the Commission staff in preparing for examinations of investment advisers and assessing adviser compliance with Rule 204–2 and ultimately help ensure that trades involving such advisers will timely settle on T+1. In addition, this requirement will help advisers research and remediate issues that may cause delays in the issuance of allocations and affirmations and improve their timeliness overall. Requiring these records also will help advisers establish that they have timely met contractual obligations, if applicable, or any requirements broker-dealers impose in light of their compliance obligations under final Rule 15c6–2.

V. Exchange Act Rule 17Ad–27—Requirement for CMSPs To Facilitate Straight-Through Processing

A. Proposed Rule 17Ad–27

In the T+1 Proposing Release, the Commission proposed new Rule 17Ad–27 to establish new requirements for certain clearing agencies acting as CMSPs.[313] The Commission proposed these requirements to improve the efficiency of institutional trade processing, and better position CMSPs to provide services that would not only reduce risk generally, but also help facilitate an orderly transition to a T+1 standard settlement cycle, as well as potential further shortening of the settlement cycle in the future.[314] CMSPs have become increasingly critical to the functioning of the securities market over the past twenty years, due in part to the rising volume of securities transactions for which CMSPs provide matching and other services.[315] A shortened settlement cycle may lead to expanded use of CMSPs, as well as an increased focus on enhancing the services and operations of the CMSPs themselves.[316] While the introduction of new technologies and streamlined operations such as those offered by CMSPs have improved the efficiency of post-trade processing over time, the Commission stated in the T+1 Proposing Release that more could be done to facilitate further improvements.[317] Specifically, the Commission explained that eliminating the use of tools that encourage or require manual processing, alongside the continued development and implementation of more efficient automated systems in the institutional trade processing environment, is essential to reducing risk and costs to ensure the prompt and accurate clearance and settlement of securities transactions, particularly in a T+1 environment.[318]

As proposed, Rule 17Ad–27 was comprised of two requirements. First, the proposed rule would require a clearing agency that provides central matching services for transactions involving broker-dealers and their customers (*i.e.,* CMSPs) to establish, implement, maintain and enforce policies and procedures to facilitate STP for transactions involving broker-dealers

[306] T+1 Proposing Release, *supra* note 2, at 10456–57.

[307] *See* ISITC Letter, *supra* note 29, at 4–5; FIX Trading Letter, *supra* note 218, at 4; AIMA Letter, *supra* note 29, at 2.

[308] FIX Trading Letter, *supra* note 218, at 4.

[309] ISITC Letter, *supra* note 29, at 4–5.

[310] *Id.* at 4–5 (noting that such considerations include the agreement on the time stamp format, evidence of time stamps (for compliance or audit purposes), time differences due to multiple systems and participants resulting in time stamps that may not perfectly match, and new processes needed to govern resolution of time stamps that could delay trade processing when all pertinent trade details are otherwise correct and agreed).

[311] *See* AIMA Letter, *supra* note 29, at 2.

[312] *See* T+1 Adopting Release, *supra* note 2, at 10456.

[313] *See id.* at 10457. CMSPs are clearing agencies as defined in section 3(a)(23) of the Exchange Act, and as such, are required to register as a clearing agency or obtain an exemption from registration. The Commission has currently exempted three CMSPs from the registration requirement. The Commission also has adopted rules that apply to both registered and exempt clearing agencies, including CMSPs operating pursuant to an exemption from registration. *See, e.g.,* Regulation Systems Compliance and Integrity, Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''Regulation SCI Adopting Release'').

[314] *See* T+1 Proposing Release, *supra* note 2, at 10458.

[315] *See id.; see also* Press Release, DTCC, Over 1,800 Firms Agree to Leverage U.S. Institutional Trade Matching Capabilities in DTCC's CTM (Oct. 12, 2021), *https://www.dtcc.com/news/2021/october/12/over-1800-firms-agree-to-leverage-dtccs-ctm*; DTCC's Trade Processing Suite Traffics One Billion Trades, Traders Magazine (Feb. 13, 2017), *https://www.tradersmagazine.com/departments/clearing/dtccs-trade-processing-suite-traffics-one-billion-trades/.*

[316] *See* T+1 Proposing Release, *supra* note 2, at 10458.

[317] *See id.* at 10457.

[318] *See id.* at 10458.

and their customers.[319] Second, the proposed rule would require a CMSP to submit to the Commission every twelve months a report that describes (i) the CMSP's current policies and procedures for facilitating straight-through processing; (ii) the CMSP's progress in facilitating straight-through processing during the twelve month period covered by the report; and (iii) the steps the CMSP intends to take to facilitate and promote STP during the twelve month period following the period covered by the report.[320]

Proposed Rule 17Ad–27 would require a CMSP to submit the annual report to the Commission using EDGAR, and to tag the information in the report using structured XBRL.[321] The Commission stated in the proposal that this annual report would be made publicly available on the Commission's website to enable the public to review and analyze progress on achieving straight-through processing, identify potential improvements to further facilitate straight-through processing, and provide the Commission and the public with a centralized, publicly accessible electronic database for the reports, facilitating the use of the reported data on straight-through processing.[322] The proposing release also discussed the Commission's preliminary view as to its intended understanding of various aspects of the two main requirements under proposed Rule 17Ad–27, including terms used in the rule text.[323]

B. Comment Letters From DTCC ITP

The Depository Trust & Clearing Corporation (''DTCC''), in conjunction with DTCC ITP LLC and DTCC ITP Matching (US) LLC, (collectively ''DTCC ITP'') submitted two comment letters discussing proposed Rule 17Ad–27,[324] and these were the only comments received by the Commission that extensively discussed proposed Rule 17Ad–27.[325] DTCC ITP Matching (US) LLC (''ITP Matching US'') operates one of three entities that to date have received from the Commission an exemption from registration as a clearing agency to operate as a CMSP.[326] ITP Matching US currently offers two services to facilitate post-trade processing of institutional trades: (i) TradeSuite ID, an electronic trade confirmation (''ETC'') service; [327] and (ii) a central trade matching service (''CTM'') for securities transactions (in its capacity as a CMSP).[328]

While DTCC ITP generally supported ''the Commission's approach to facilitating T+1 through the promotion of same-day affirmation, STP and other enhancements in the processing of institutional trades at CMSPs as core building blocks to a successful transition to T+1,'' DTCC ITP raised several concerns about specific aspects of the proposed rule and requested specific modifications to the proposed rule text. DTCC ITP stated that these changes would provide additional flexibility and clarity, and better position CMSPs to achieve the stated goals of the proposed rule.[329] Specifically, and as detailed below, DTCC ITP expressed in its comment letters the following concerns.

1. Amend Policies and Procedures Requirement To Add ''Reasonably Designed'' to the Current Text

In its initial comment letter, DTCC ITP suggested that the requirement in proposed Rule 17Ad–27 for a CMSP to establish, implement, maintain, and enforce policies and procedures should be amended so that a CMSP's policies and procedures are ''reasonably designed'' to facilitate STP.[330] The commenter provided a number of reasons to support the amendment.[331] First, in the commenter's view, the

[319] *See id.* at 10458–59.

[320] *See id.* at 10459–60.

[321] *See id.* at 10459. This requirement would be implemented by including a cross-reference to Regulation S–T in proposed Rule 17Ad–27, and by amending Regulation S–T to include the proposed straight-through processing reports. Pursuant to 17 CFR 232.301 (''Rule 301 of Regulation S–T''), the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission.

[322] *See id.*

[323] For example, the commonly used term ''straight-through processing'' was explained in the T+1 Proposing Release as to generally refer to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *Id.* at 10458 (citing to Securities Industry Association (SIA), T+1 Business Case Final Report (July 2000) (''SIA Business Case Report''), *https://www.sifma.org/wp-content/uploads/2017/05/t1-business-case-final-report.pdf*).

[324] *See* DTCC ITP April Letter, *supra* note 216; letter from Matthew Stauffer, Managing Director and Head of DTCC Institutional Processing, DTCC (Sept. 30, 2022) (''DTCC ITP September Letter''). DTCC ITP Matching (US) LLC is a wholly-owned subsidiary of DTCC ITP LLC, a Delaware limited liability company controlled by its sole member, DTCC. DTCC is the parent company of The Depository Trust Company, the National Securities Clearing Corporation, and the Fixed Income Clearing Corporation, all registered with the Commission as clearing agencies under section 17A of the Exchange Act.

[325] In addition, the Commission received three comment letters from The Options Clearing Corporation (''OCC''), State Street, and the FIX Trading Community that referenced proposed Rule 17Ad–27. Like DTCC ITP, OCC recommended including ''reasonably designed'' in the text of any rule requiring a ''registrant'' to maintain policies and procedures. *See* OCC Letter, *supra* note 15, at 3. State Street supported measures intended to enhance STP at CMSPs, including the annual publication of data on matching rates and other similar efficiency metrics. *See* State Street Letter, *supra* note 15, at 4. FIX supported efforts to retire manual mechanisms while ensuring that electronic bilateral and central matching mechanisms that support STP are permitted. *See* FIX Trading Letter, *supra* note 227, at 4. Given the brief and general nature of these comments, and the fact that they are aligned with comments also made by DTCC ITP, the Commission has focused its discussion for the remainder of Part V on the substantive points raised by DTCC ITP.

[326] *See* Order Granting Exemption from Registration as a Clearing Agency for Global Joint Venture Matching Services—U.S., LLC, Exchange Act Release No. 33188 (Apr. 17, 2001), 66 FR 20494, (Apr. 23, 2001) (''GJVMS Exemption Order''); Order Approving Application for an Exemption from Registration as a Clearing Agency for Bloomberg STP LLC and SS&C Techs, Inc., Exchange Act Release No. 76514 (Nov. 24, 2015), 80 FR 75388, 75413 (Dec. 1, 2015) (''Bloomberg STP and SS&C Techs Exemption Order''). DTCC ITP Matching US is formerly known as GJV Matching Service—US, LLC.

[327] An ETC allows market participants, such as broker-dealers, investment managers, hedge funds, banks, custodians, and agents, to coordinate domestic post-trade activities, generally by providing trade counterparties with the ability to electronically confirm and affirm certain details of their trades. This automated process eliminates manual and verbal communications in the confirmation and affirmation process, thereby reducing risks and facilitating shorter settlement timeframes. For a description of ETCs generally, *see* GJVMS Exemption Order, *supra* note 326, at 20496.

[328] *See* DTCC ITP April Letter, *supra* note 216, at 2. Generally, TradeSuite ID allows broker-dealers, buy-side firms, custodians, and agents to confirm and affirm elements of their trades in equity and fixed income securities through an automated post-trade process. CTM allows broker-dealers and buy-side firms to electronically match block trades, allocations, and confirmations in trades involving a wide variety of asset classes and provides a trade allocation and acceptance service that communicates trade and allocation details between parties. *See id.* at 2–3.

[329] For example, DTCC ITP supported the concept of requiring policies and procedures and submission of an annual report but suggested specific recommendations regarding what should be included in the annual report. Further, it supported not ''prescribing'' the meaning of key terms and concepts used in the rule text, such as ''allocation,'' ''confirmation,'' ''affirmation,'' and ''customer,'' or stipulating separate requirements and deadlines for each of these processing functions or specifying separate requirements and deadlines for each processing step. *See id.* at 3–4.

[330] *See id.* at 4. The Commission described STP in the T+1 Proposing Release as generally referring to the processes that allows for automation of the entire trade process from trade execution through settlement without manual intervention. *See* T+1 Proposing Release, *supra* note 2, at 10458. In the context of institutional trade processing, STP occurs when a market participant or its agent uses the facilities of a CMSP to enter trade details and completes the trade allocation, confirmation, affirmation, and/or matching processes without manual intervention. *See* DTCC ITP April Letter, *supra* note 216, at 5.

[331] As discussed further in Part V.C.1 below, the Commission concurs with DTCC ITP's general suggestion that amending the policies and procedures requirement to add ''reasonably designed'' is appropriate, but for reasons other than those cited by DTCC ITP in its comment letter. *See* DTCC ITP April Letter, *supra* note 216, at 4.

proposed rule is an inflexible standard that places ''all responsibility'' for facilitating STP on the CMSPs, and as such, is inconsistent with the Commission's view of STP generally, and with regard to CMSPs specifically, will undermine the stated goal of facilitating STP.[332] Further, DTCC ITP expects that the proposed text would result in CMSPs avoiding innovation of new technologies that promote STP because of liability concerns.[333] In contrast, DTCC ITP stated, amending the rule text to reflect a ''reasonably designed standard'' would make the rule consistent with the Commission's stated policy goals.

Second, DTCC ITP stated that the ''standard'' in proposed Rule 17Ad–27 is inconsistent with the approach the Commission has applied to CMSPs in the orders exempting matching services from registration as a clearing agency because the approach in the exemptive orders is more flexible than that of the proposed rule.[334] For example, the commenter stated that the exemptive orders applicable to CMSPs clarify that, in reports required of CMSPs and their service providers indicating trade processing timeframes, the CMSP is not responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to the CMSP.[335] DTCC ITP stated that the approach laid out in the exemptive order is the appropriate one because it explicitly acknowledges the fact that the CMSP does not have ''perfect'' control over all aspects of trade processing, even in instances where its systems otherwise have been reasonably designed to facilitate STP. Accordingly, DTCC ITP maintains that introducing the reasonably designed policies and procedures standard would eliminate inconsistencies between the proposed rule and the exemptive orders.

Third, DTCC ITP asserts that the proposed standard is inconsistent with the Commission's economic analysis of proposed Rule 17Ad–27.[336] Referring to the Commission's statement in the T+1 Proposing Release that the policies and procedures requirement should result in the same estimated costs as similar policies and procedures requirements and burden estimates under other rules for registered clearing agencies, DTCC ITP noted that those requirements and the attendant compliance burdens and costs are based on a ''reasonably designed'' standard.[337] Therefore, DTCC ITP stated that it does not believe that the proposed economic analysis relating to burdens and costs of proposed Rule 17Ad–27 is consistent with the underlying legal standard reflected in the proposed rule.[338]

Fourth, DTCC ITP stated that ''precedent shows'' that the Commission's stated STP goals can be achieved by using a standard that includes ''reasonably designed.'' As examples, DTCC ITP cited to the requirements for registered clearing agencies, which it noted are ''replete with obligations for such entities to have policies and procedures 'reasonably designed' to achieve a particular result.'' [339] Such an approach, DTCC ITP stated, allows the clearing agencies to use their experience and understanding of the markets they serve to shape the rules, policies, and procedures implementing such rules and such an approach with other clearing agencies' rules has resulted in outcomes that benefit the resilience and ongoing evolution of the national clearance and settlement system.[340] DTCC ITP also stated that CMSPs are already subject to a reasonably designed policies and procedures standard pursuant to their requirements under 17 CFR 242.1000 through 242.1007 (''Regulation SCI'').[341]

2. Use of ETCs and Manual Processes

DTCC ITP stated that the proposed rule should not ''abruptly force'' or require an immediate ''disorderly elimination'' of ETC services and related manual processes used by market participants today.[342] Instead, DTCC ITP recommended ensuring that the proposed rule does not force market participants to move away from ETC services in a sudden and disruptive manner and clarify the degree to which CMSPs are responsible for realizing the Commission's goal of moving away from manual processes as soon as technologically practicable.[343]

[332] *See id.* at 5. Because the obligation to develop policies and procedures to facilitate STP, as described in proposed Rule 17Ad–27 applies to CMSPs only, the scope of the policies and procedures would only include those activities that are within the control of the CMSP, which in turn would bind only those entities that are in contractual privity with the CMSP. Moreover, the Commission proposed a number of other rules that required other market participants, namely broker-dealers and investment advisers, to comply with specified rules addressing same-day affirmation that the Commission anticipates will not only facilitate T+1 but encourage the development of more efficient and automated operations, which will in turn further STP. *See supra* Parts III.A and IV.A concerning proposed Rule 15c6–2 and amended Rule 204–2, respectively. Accordingly, the Commission does not believe that the policies and procedures requirement under the proposed rule imposes an inflexible standard that places ''all responsibility'' for facilitating STP on the CMSPs or is inconsistent with the Commission's view of STP generally or its stated policy goals.

[333] *See* DTCC ITP April Letter, *supra* note 216, at 6.

[334] *See id.* The Commission does not agree with DTCC that the ''standard'' in proposed Rule 17Ad–27 applicable to the policies and procedures requirement is inconsistent with the approach taken in the exemptive orders applicable to CMSPs, but the obligations of the proposed rule and the exemptive order are separate and distinct from each other. The terms of the exemptive order include certain obligations relating to (i) operational conditions (*e.g.,* providing the Commission with certain audit reports, annual report, annual risk assessments, notice of significant system outages, advance notice of material changes, affirmation rate data, record retention, copies of service agreements, obligation to not perform any clearing agency function other than those permitted by the exemptive order); (ii) interoperability conditions relating to linkages and interfaces with other CMSPs; (iii) requirement to negotiate fair and reasonable prices relating to such interfaces; and (iv) obligations relating to customer charges for certain activities and information. *See* GJVMS Exemption Order, *supra* note 326, at 20498–501. These conditions were established to ensure that ITP Matching US will have sufficient operational and processing capacity to facilitate prompt and accurate matching services and are designed to enable the Commission to monitor its risk management procedures, operational capacity and safeguards, corporate structure and ability to operate in a manner to further the fundamental goals of section 17A of the Exchange Act. Proposed Rule 17Ad–27 would impose an additional and separate obligation to develop policies and procedures that facilitate STP. In the exemptive order, the Commission has reserved the right to modify by order the terms, scope, or conditions of the exemption if it determines that such modification is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the Exchange Act. GJVMS Exemption Order, *supra* note 326, at 20501. The Commission believes no such modification is necessary because proposed Rule 17Ad–27 is consistent with the conditions set forth within the exemptive order.

[335] *See* GJVMS Exemption Order, *supra* note 326, at 20500.

[336] *See* DTCC ITP April Letter, *supra* note 216, at 7.

[337] *See id.*

[338] *See id.; see also infra* Part VIII.C for further information on DTCC ITP's comment regarding the Commission's economic analysis.

[339] DTCC ITP April Letter, *supra* note 216, at 7. DTCC ITP specifically cites to Rule 17Ad–22(e), the set of Commission rule provisions applicable to covered clearing agencies. *See* 17 CFR 240.17Ad–22(e).

[340] *See* DTCC ITP April Letter, *supra* note 216, at 7.

[341] *See id.; see also* 17 CFR 242.1001 through 242.1007.

[342] DTCC ITP April Letter, *supra* note 216, at 7. *See infra* Part V.C.1 (discussing the Commission's approach to the use of manual operations, including those related to ETC services, under adopted Rule 17Ad–27).

[343] *See id.* at 8–9. The T+1 Proposing Release stated that with respect to the use of ETCs that impede the development of STP and which often rely on legacy technologies, a CMSP's policies and procedures generally should establish a timeline for transitioning users away from such manual processes to service offerings that can reduce a party's reliance on the manual, often sequential, entry and reconciliation of trade information. T+1 Proposing Release, *supra* note 2, at 10458. However, as stated in that release, proposed Rule 17Ad–27 did not require CMSPs to remove manual processes if doing so would clearly undermine the prompt

Continued

DTCC ITP requested additional clarity around the practical applications of manual processing when its use is necessary for, or its elimination may undermine, prompt and accurate settlement of transactions.[344] Further, DTCC ITP noted that in certain circumstances the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade and settlement information and minimize operational or other risks that may prevent settlement.[345] Therefore, according to DTCC ITP, the rule should not require without further study the removal of manual processes if doing so would undermine the prompt and accurate settlement of securities transactions. Similarly, DTCC ITP stated that it seeks more clarity around the Commission's description of the CMSP's role in facilitating a transition away from manual processes, particularly as it relates to ETC services and timelines for transitioning away from manual processes, some of which may not be under the CMSP's control.[346]

DTCC ITP also raised concerns about the requirement that the CMSP explain in its policies and procedures why manual processes remain necessary as part of its systems and processes and consider developing processes that would eliminate the underlying issues that drive the use of manual process.[347] It is unclear, according to DTCC ITP, how this requirement relates to the broader aspects of the proposal concerning the facilitation of STP. By way of example, DTCC ITP posed a number of questions regarding: (i) how the requirement aligns with the requirement to facilitate STP; (ii) what practical efforts should the CMSP undertake when it considers developing processes that eliminate the underlying reason for the persistent use of manual processes; (iii) what is the relevancy of a cost benefit analysis in developing policies and procedures; and (iv) what particular factors a CMSP should consider.[348]

To help address these concerns, DTCC ITP recommended that the Commission provide further guidance in the form of high-level principles or standards regarding what is intended by the concept ''as soon as technologically practicable'' to minimize or eliminate manual processing for either the input of trade details or to resolve errors and exceptions that can prevent settlement.[349] DTCC ITP suggested that achieving something as soon as technologically practicable should entail a determination that the intended outcome is commercially reasonable, economically viable, and operationally scalable.[350]

3. Amend the Annual Reporting Requirement To Better Achieve Transparency

While generally supporting the requirement for CMSPs to file annual reports, DTCC ITP stated that it did not understand the particular elements it would be required to include in the annual report, or how those elements supported the Commission's stated objectives of the annual report, and expressed concerns about a CMSP's ability to complete the annual report consistent with the Commission's goals.[351] DTCC ITP also expressed concerns that a description of some types of information in its policies and procedures may contain proprietary or confidential information, and as such, a description of its policies and procedures should not be required in the annual report.[352] As an alternative, DTCC ITP recommended that the annual report provision of the proposed rule be amended to focus more on quantitative reporting and less on qualitative descriptive reporting. Specifically, DTCC ITP recommended eliminating proposed subsections (a) through (c) of proposed Rule 17Ad–27 requiring specified descriptions, and instead recommended including a requirement in the rule text for public reporting of quantitative data on an anonymized and aggregated level for rates of allocation, confirmation, affirmation and/or matching over the twelve month period covered by the report.[353] Further, DTCC ITP suggested disclosure of additional data elements, such as affirmation rates for institutional trade and prime brokerage trade flows, and affirmation rates for institutional trade flows achieved separately through an ETC or through a central matching facility.[354]

To provide further detail regarding the content of the annual report as it relates to quantitative reporting requirements, DTCC ITP submitted its second comment letter.[355] Based on its review of the data available in its systems, DTCC ITP stated its belief that certain high-level categories of metrics that should be included in the rule text for proposed Rule 17Ad–27 to help

and accurate clearance and settlement of securities transactions. *See id.* at 10458–59. As discussed in Part V.C below, Rule 17Ad–27 will allow CMSPs some flexibility in designing policies and procedures that reduce or eliminate manual operations in a manner that does not undermine the CMSP's obligations under section 17A of the Exchange Act and are appropriate for the CMSP's particular operations, services, and business models. *See infra* Part V.C.1. This flexibility applies to CMSPs general operations as well as any associated with ETC services. Moreover, if the ETC is not impeding the development of STP, the CMSP may determine the use and operations of the ETC is consistent with both the obligations required of CMSPs pursuant to adopted Rule 17Ad–27 as well as those under section 17A of the Exchange Act.

[344] *See* DTCC ITP April Letter, *supra* note 216, at 9. DTCC ITP stated that more clarity is needed to better understand what constitutes a manual process and if, when, and how the use of manual processes may be acceptable under proposed Rule 17Ad–27. For example, DTCC ITP cited the need for additional clarity as to how removing a manual process could ''clearly undermine'' settlement, what factors would be taken into account in applying this standard, and whether unmatched trades and fails or exceptions. *See id.*

[345] *See id.*

[346] *See id.* at 9–10.

[347] *See id.* at 10.

[348] *See id.* As discussed in Part V.C of this release, the use of manual operations or automated operations that may result in manual intervention is a potential source of risk and costs both at the CMSPs and in the U.S. clearance and settlement system. Moving towards a processing environment that facilitates STP at the CMSP should help alleviate some of these risks and costs. As stated in the T+1 Proposing Release, the Commission understands that at this time there may be certain scenarios where human intervention is necessary or prudent, however, as technology and the markets evolve over the near term, the expectation is that CMSPs would attempt to reduce or eliminate instances where human intervention is required. T+1 Proposing Release, *supra* note 2, at 10458–59.

[349] *See* DTCC ITP April Letter, *supra* note 216, at 10. The T+1 Proposing Release stated that a CMSP facilitates STP when its policies and procedures enable its users to minimize or eliminate, to the greatest extent that is technologically practicable, the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of the trade. A CMSP also facilitates straight-through processing when it enables, to the greatest extent that is technologically practicable, the transmission of messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents. T+1 Proposing Release, *supra* note 2, at 10458. However, as discussed in Part V.C.2 below, there may be situations where the minimization or elimination of certain manual operations is not appropriate or feasible in the near term. The facts and circumstances determining ''as soon as technologically practicable'' will vary across CMSPs, depending upon their services, systems, and business models. Accordingly, CMSPs should generally use their expertise to assess the extent to which a specific policy or procedure is appropriately designed to facilitate STP.

[350] *See* DTCC ITP April Letter, *supra* note 216, at 10.

[351] *See id.* at 11. For example, DTCC ITP expressed concerns that the term ''description'' needs more clarity related to required content and level of detail.

[352] *See id.* DTCC ITP stated that requiring a CMSP to engage in the future cost and effort of analyzing the need for confidential treatment of such information will impede efforts by CMSP to innovate. *See infra* Part V.C.2 for the Commission's discussion of treatment of confidential information.

[353] *See* DTCC ITP April Letter, *supra* note 216, at 12. As discussed further in Part V.C.2 below, the Commission is retaining the qualitative and quantitative aspects of the annual report, but has modified that requirement to address the anonymization and aggregation issues described in this comment letter.

[354] *See id.; see also infra* Part V.C.2 for the discussion of the metric requirements under Rule 17Ad–27(b), as adopted.

[355] *See* DTCC ITP September Letter, *supra* note 325.

objectively demonstrate trends toward more automation, less manual intervention, and progress towards STP.[356] Defining specific metric categories, DTCC ITP stated, would promote consistency and clarity across reporting and leave some flexibility for CMSPs to provide metrics which may be most appropriate to their specific activities and services.[357] Recommendations for specific data categories included: (i) trade volume metrics, such as the total number of allocations and confirms submitted to a CMSP's matching service and total number of confirmations and cancelled confirmations submitted to an ETC service; (ii) matching metrics, such as the percentage of allocations and confirmations submitted to the CMSP that are matched or matched/auto-affirmed by specified timeframes on trade date; (iii) affirmation metrics, including the percentage of institutional and prime broker confirmations submitted to an ETC that are affirmed by specified timeframes on trade date; and (iv) STP metrics, such as data concerning manual processes.[358]

DTCC ITP also requested clarity as to when CMSPs would be required to submit their initial annual reports, as well as the time period applicable to the actual content to be included in the initial annual report.[359] DTCC ITP recommended that the initial twelve-month reporting period should begin after both the T+1 compliance date and the same-day affirmation rules come into effect, which according to DTCC ITP will provide a baseline that is predicated on implementation of all Commission requirements designed for a T+1 settlement cycle, and will provide a clear review and analysis of progress in advancing STP on a year-by-year basis without having to adjust to interpret reporting periods when the rules were not entirely in effect across the whole post-trade market.[360]

4. Support Further Standardization of Industry Protocols and Reference Data

DTCC ITP recommended that the Commission prioritize the development of proposals requiring market participants to increase the use of standardized settlement instructions (''SSIs'').[361] Promoting greater adoption of SSIs, DTCC ITP stated, is critical to addressing the potential risk of settlement errors and fails in a T+1 environment, and DTCC ITP further stated its belief that centrally managed SSIs become even more critical in terms of the secure transmission of sensitive account and reference data necessary for settlement.[362] DTCC ITP asserted that increased focus on, and the consequences of, cyber risk and fraudulent activity also necessitate the need for fully automated and centralized management and secure communication of critical SSI reference data, and noted an industry survey that indicated SSI-related issues continue to be one of the most common reasons for settlement fails.[363]

C. Final Rule and Discussion

CMSPs facilitate communications among a broker-dealer, an institutional investor or its investment adviser, and the institutional investor's custodian to reach agreement on the details of a securities transaction, enabling the trade allocation, confirmation, affirmation, and/or the matching of institutional trades.[364] Once the trade details have been agreed among the parties or matched by the CMSP, the CMSP can then facilitate settlement of the transaction.

As mentioned above and detailed in the T+1 Proposing Release, the rising volume of transactions for which CMSPs provide matching and other services have caused CMSPs to become increasingly critical to the functioning of the securities market.[365] The Commission anticipates that a shortened settlement cycle may lead to further expanded use of CMSPs, as well as increased focus on enhancing the services and operations of the CMSPs themselves.[366] In addition, some SRO rules currently require the use of CMSP services for institutional trade processing.[367] The Commission believes that more could and should be done to ensure that CMSPs, as critical utilities in the securities market, are operating in a manner that improves the clearance and settlement of securities transactions through improvements in efficiency, risk reduction, and costs. Reducing and, where possible, eliminating the use of tools and services that encourage or require manual processing, along with the continued development and implementation of more efficient automated systems that facilitate STP in the institutional trade processing environment at the CMSP, is essential to improving those efficiencies, as well as reducing risk and costs, to ensure the prompt and accurate clearance and settlement of securities transactions.[368]

Over the past decade CMSPs have become increasingly connected to a wide variety of market participants in the U.S.[369] New Rule 17Ad–27 will require CMSPs, and by extension their users, to assess their processes and find solutions to reduce or eliminate reliance on services at CMSPs that involve manual or inefficient processes or otherwise do not further facilitate STP in the institutional trade processing environment. This in turn should better position CMSPs to provide services that not only reduce processing risk and costs, but also generally facilitate a more orderly transition to a T+1 standard settlement cycle in the near term,[370] as well as potential further shortening of the settlement cycle in the future.

Accordingly, the Commission is adopting proposed Rule 17Ad–27 with modifications. As explained further below, the Commission is adding the language ''reasonably designed'' to the policies and procedures requirement in

[356] *See id.* at 2.

[357] *See id.*

[358] *See id.* at 2–3. Part V.C.2 below further discusses the quantitative data requirements under Rule 17Ad–27(b), as modified. As discussed in that section, the Commission is opting to specify the particular data required under the rule rather than require data categories to ensure the data will capture specific information that can enable effective analysis of the CMSPs' progress in facilitating STP.

[359] *See id.* at 3. Part V.C.3 below further discusses the required contents and timing of the initial and subsequent annual reports under adopted Rule 17Ad–27(c).

[360] *See id.* DTCC ITP indicated in its comment letter that it is considering publishing the annual report on its website to provide the public with ready access to the information. *See id.* at 4. Part V.C.4 below further describes the filing requirements and provides related guidance regarding the filing of the annual report.

[361] *See* DTCC ITP April Letter, *supra* note 216, at 8. The use of SSIs is just one of many standardization mechanisms available to assist CMSPs in streamlining their internal operations to reduce reliance on manual processes, which can facilitate STP. Part V.C.1 below discusses SSIs in the context of the development of the CMSP's policies and procedures under Rule 17Ad–27(a). *See infra* note 386.

[362] *See id.*

[363] *See id.*

[364] For a general description of the role of CMSPs in the U.S. markets, *see* T+1 Proposing Release, *supra* note 2, at 10439.

[365] *See supra* note 315 and accompanying text.

[366] *See* T+2 Proposing Release, *supra* note 4, at 69258. For example, increasing the efficiency of using a CMSP can reduce the risk that a trade will fail to settle and reduce costs associated with correcting errors that result from the use of manual processes and data entry, thereby improving the overall efficiency of the U.S. clearance and settlement system.

[367] *See, e.g.,* Financial Industry Regulatory Authority (FINRA) Rule 11860 (requiring a broker-dealer to use a registered clearing agency, a CMSP, or a qualified vendor to complete delivery-versus-payment transactions with their customers).

[368] *See* T+1 Report, *supra* note 61, at 9.

[369] *See, e.g.,* DTCC, About DTCC Institutional Trade Processing, *https://www.dtcc.com/about/businesses-and-subsidiaries/dtccitp* (noting that DTCC ITP, parent to DTCC ITP Matching, serves 6,000 financial services firms in 52 countries).

[370] As discussed in Part II above, the T+1 Report contemplates moving the ''ITP Affirmation Cutoff'' from 11:30 a.m. ET on the day after trade date to 9:00 p.m. ET on trade date. *See* T+1 Report, *supra* note 61, at 13, 39.

paragraph (a), adding additional requirements in paragraph (b) to specify the data to be included in the annual report, and adding paragraph (c) to explain the required timing of filing the annual report. The Commission believes these changes are responsive to the commenter's concerns and provide CMSPs flexibility to address individualized operations, services, types of users, and business objectives, and provide specificity to the data requirements while at the same time retaining those provisions that facilitate achieving the stated objectives of the new rule. In addition, and as discussed in more detail below, the Commission is making several technical modifications, including reorganizing the specific obligations under the proposed rule by subdividing those obligations into paragraphs (a) through (d), and adopting revisions to other technical aspects of and terms used in the proposed rule text to improve clarity.

1. New Rule 17Ad–27(a)—Requirement for Policies and Procedures

As discussed below, the Commission is retaining the proposed requirement in Rule 17Ad–27 to establish, implement, maintain, and enforce policies and policies, but is making several modifications. As with the proposed rule, the final rule will require CMSPs to develop policies and procedures focused on facilitating improvements in their operations, systems, and user obligations to further the development of STP [371] in the processing of institutional trades, improve efficiency, facilitate both cost and risk reduction in the clearance and settlement of institutional trades generally, and better accommodate shorter settlement cycles.[372] The requirement to establish, implement, maintain and enforce policies and procedures in new Rule 17Ad–27(a) is as an important and efficient mechanism that will require CMSPs, and by extension those market participants that choose to rely on CMSPs to facilitate clearance and settlement, to develop and implement specific operational procedures and systems to facilitate STP. This, in turn, will enable, over time, STP in the post-trade processing of institutional trades. Importantly, the rule will also encourage the development of strategic plans on a forward-looking basis to facilitate STP within the CMSP's operating framework and to facilitate internal and external assessments as to the viability and implementation of those strategic plans. By virtue of the expanded use of CMSPs generally and the global nature of post-trade processing today, the Commission anticipates that these efforts will require CMSPs to coordinate their development activities with a variety of other market participants that impact the CMSPs' ability to provide beneficial efficiencies, which should in turn encourage the use of CMSPs. Finally, the development of policies and procedures by CMSPs will facilitate the Commission's ongoing development of the national clearance and settlement system generally by enhancing the oversight of CMSPs and ensuring a documented approach to further STP.

Specifically Rule 17Ad–27(a), as adopted, requires a clearing agency that provides a central matching service (*i.e.,* a CMSP) to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing of securities transactions at the clearing agency.[373] Because the policies and procedures requirement is distinct from the annual report requirement (discussed below), this requirement is now designated as new paragraph (a) in final Rule 17Ad–27, as adopted. The final rule also removes the reference to ''transactions involving broker-dealers and their customers'' because it is only explanatory text describing the types of parties that may use a central matching service and therefore is unnecessary to include in the rule text.[374] Lastly, the final rule makes clear that the policies and procedures must be ''written.''

The provision to ''establish, implement, maintain, and enforce'' written policies and procedures requires the CMSP to establish and implement such policies and procedures by the compliance date and to ensure that the policies and procedures remain current on an ongoing basis, including by implementing timely updates or revisions.[375] Moreover, the requirement to ''enforce'' requires the CMSP to develop a reasonable approach with sufficient specificity to ensure that its users comply with any required user obligations and to make clear any consequences of non-compliance within the established policies and procedures framework and the timeframes associated with any such consequences. The Commission encourages, but does not require, the CMSP to provide users with access to the required CMSP policies and procedures well in advance of any compliance obligations applicable to users to ensure that they can thus make the necessary arrangements or changes to comply with any user obligations contained therein.

The periodic review required by the ''establish, implement and maintain'' component of the CMSP's policies and procedures requirement under adopted Rule 17Ad–27(a) should also help ensure that a CMSP considers in a holistic fashion how the obligations it requires of its users will advance the implementation of methodologies, operational capabilities, systems, or services that support STP. It should also encourage the CMSP and its users to identify inefficiencies and manual processes that impede the STP objective and, to the extent possible, develop automated and streamlined solutions to address those issues.

The scope of the policies and procedures required under new paragraph (a) generally should focus on those aspects of the CMSP's operations and services that directly or indirectly relate to facilitating STP in the processing of institutional trades at the CMSP.[376] The Commission understands that the CMSP only controls its internal functions, and not those of its users, and as such, the rule as adopted requires the CMSP to design its policies and procedures around its own internal functions and services. However, and to the extent practicable, the Commission encourages CMSPs to develop a policies

[371] As discussed above, the term ''straight-through processing,'' as used by the financial services industry, generally refers to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *See supra* note 330. In the context of institutional trade processing under this rule, STP occurs when a market participant or its agent uses the facilities of a CMSP to enter trade details and completes the trade allocation, confirmation, affirmation, matching processes, or any combination thereof, without manual intervention.

[372] In some cases, the use of manual or inefficient processing introduces errors and operational risks that delay settlement and may result in a failure to settle the transaction. The Commission believes that, by engaging in the process of developing and periodically assessing their policies and procedures, CMSPs will not only foster solutions to mitigate or alleviate these inefficiencies and risks internally but also consider these issues as they apply to the general processing stream that may be relevant to the CMSP's operations and its users.

[373] The new rule text adds the word ''written'' to the policies and procedures requirement to require that the policies and procedures must be established as a written document.

[374] *See, e.g.,* Bloomberg STP and SS&C Techs Exemption Order, *supra* note 326, at 75388–90 (generally describing the clearing agency applicants as providers of a ''matching service'' or ''central matching service'' without reference to the types of customers served).

[375] *See infra* Part VII for a discussion of the compliance dates.

[376] Accordingly, those aspects of the CMSP's operations or services that are not directly or indirectly related to facilitating STP are not required to be included in the policies and procedures required under Rule 17Ad–27(a). However, the rule does not preclude the CMSP from adopting policies and procedures that are beyond the scope of Rule 17Ad–27(a).

and procedures framework that incentivizes CMSP users and their customers to adopt and implement the necessary systems and services within their own firms to make full use of the CMSP's systems that facilitate STP.[377] While some of this may occur organically as CMSP users that agree to use specific CMSP services or systems reconfigure their systems to accommodate the initial and updated CMSP policies and procedures, CMSPs generally should also endeavor to create incentives within the policies and procedures framework that encourage more widespread use of their STP-oriented systems, both among current CMSP and non-CMSP users. For example, creating cost-saving operational efficiencies within the CMSP or developing attractive price structures may create incentives for more widespread use of the CMSPs services.

Moreover, the policies and procedures framework generally should also endeavor, to the extent prudent, to dis-incentivize the use of manual systems or automated systems that do not facilitate STP.[378] The Commission views the facilitation of STP as providing the necessary efficiencies, both on a technological, operational, and service level, to remove to the extent practicable and prudent the need for manual intervention (or automated systems that result in the need for manual intervention) in the acceptance of trade information and the process by which the CMSP provides for allocation, confirmation, affirmation, and matching services. The Commission also understands that at this time there may be scenarios where human intervention is necessary or prudent. However, as technology and the markets evolve over the near term, CMSPs should consider reducing or eliminating instances where human intervention is required as soon as reasonably possible, both on a technological and operational basis.

To provide flexibility and discretion in the development of a particular CMSP's policies and procedures, the Commission is adding the new language ''reasonably designed'' to the policies and procedures requirement in final Rule 17Ad–27(a), as adopted. The insertion of the language ''reasonably designed'' in the policies and procedures requirement should allow CMSPs to tailor their policies and procedures to accommodate their individualized internal operations, systems, business models and users as they determine how best to facilitate STP within their particular processing environment and to mitigate any issues particular to that CMSP that frustrate achieving STP. That discretion should allow the CMSP to determine whether specific policies and procedures designed to further STP are reasonable relative to certain considerations applicable to that particular CMSP and its users, particularly as those assessments may change over time. Moreover, and as explained by the commenter, given that other Commission rules applicable to clearing agencies incorporate a ''reasonably designed'' component in the policies and procedures required under such rules, CMSPs should have familiarity and experience in drafting ''reasonably designed'' policies and procedures, as required by new Rule 17Ad–27(a).[379]

In structuring a plan to facilitate STP through reasonably designed policies and procedures, a CMSP generally should evaluate its operations and systems to determine potential sources of inefficiency or manual operation that exist within the current CMSP's processing stream, and consider addressing these frictions in a manner that does not disrupt the CMSP's ability to facilitate the prompt and accurate settlement of securities transactions.[380] Rule 17Ad–27 does not require CMSPs to force market participants to move away from ETC services in a sudden and disruptive manner or eliminate manual processing completely or on any particular timeframe if doing so would result in creating inefficiencies or impair the prompt and accurate settlement of securities transactions.[381] CMSPs generally should, however, review their STP plans annually to assess whether new disincentives to use manual processes are appropriate, particularly in light of any recent market changes or technological innovations.

As it develops its policies and procedures to facilitate STP, a CMSP may consider factors relevant to that CMSP in assessing whether any identified issues can or should be addressed and if so, how best to implement those changes.[382] For example, such factors may include: (i) the significance of certain obstacles to STP as it relates to other clearance and settlement functions and objectives, including operational efficiency and operational risk management; (ii) the frequency and impact of a particular issue; or (iii) the cost of resolving the issue versus the benefit. The flexibility afforded by the insertion of the reasonably designed language in new Rule 17Ad–27(a) also should allow CMSPs to better account for changes over time in technology, markets, business, and other advancements that promote accurate clearance and settlement, as well as any costs associated with particular policies or procedures relative to the benefits. Accordingly, the inclusion of ''reasonably designed'' should aid in the development of more effective and efficient CMSP policies and procedures required under Rule 17Ad–27, as adopted.

Under the rule, a CMSP facilitates STP when its policies and procedures enable its users to minimize or eliminate, to the greatest extent that is technologically practicable, the need for

[377] While the CMSPs policies and procedures will *directly* affect the systems and processes of its users by requiring the use of those systems and processes to be in compliance with the CMSP's STP friendly systems and processes, the CMSP's STP efforts also may *indirectly* affect the systems and process of other non-user market participants that either interact with CMSP users or by virtue of the CMSP role as a centralized utility in the market. The standardization of industry practices toward realizing increased STP capabilities internal and external to the CMSPs should in turn promote the eventual elimination of manual processing.

[378] For example, as noted by DTCC ITP in its comment letter, systems or operations that standardize certain operational functions, such as the use of SSIs, may help alleviate the need for manual operations. *See* DTCC ITP September Letter, *supra* note 325, at 2–3. However, as noted above, the use of SSIs is just one of many mechanisms available to assist CMSPs in streamlining their internal operations and in turn facilitating STP. Given that individual CMSPs may vary in the services provided or the operations and systems used to provide those services, to the extent that the use of SSIs is applicable in a particular CMSP's operations, the Commission encourages the CMSPs to consider developing incentives or requirements in their policies and procedures to encourage or compel the use of SSIs. *See supra* note 361.

[379] *See, e.g.,* 17 CFR 232.1001(a)(1), (b)(1), and (c)(1) (relating to the policies and procedures requirements under Regulation SCI). Regulation SCI is applicable to both clearing agencies that are registered as well as those that are exempted from registration. *See, e.g.,* 17 CFR 240.17Ad–22(d) and (e) (relating to the core clearing agency rules under section 17A of the Exchange Act, which are applicable to only those clearing agencies that are registered).

[380] The use of manual operations may arise for a number of reasons, including because (i) there is no automated system that facilitates a particular activity; (ii) a user has not availed itself of the automated process offered by a CMSP; or (iii) input into an automated system is rejected, resulting in the need to manually reconcile the situation. STP endeavors to eliminate manual processes by automating the entire trade process from trade execution through settlement without manual intervention. *See* T+1 Proposing Release, *supra* note 2, at 10458; *see also supra* note 323 and accompanying text.

[381] *See supra* Part V.B.2 (discussing DTCC ITP comments regarding manual processing).

[382] As discussed further below, the CMSP will be required pursuant to Rule 17Ad–27(b)(2) to provide a qualitative description of its progress in facilitating STP in its annual report to the Commission. For example, the report may describe the CMSP's approach and rationale for addressing or not addressing any issues identified as obstacles to facilitating STP. *See infra* Part V.C.2.

manual input of trade details, the manual intervention to resolve errors and exceptions that can prevent settlement of the trade, or the transmission of messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents that impede the ability of the CMSP to achieve an STP environment. In considering generally how to develop policies and procedures that facilitate STP, a CMSP generally should consider the full range of operations and services related to the processing of institutional trades for settlement and establish a holistic framework for STP on a CMSP-wide basis. CMSPs should also generally consider and address how the services, systems, and any operational requirements a CMSP applies to its users ensure that the CMSP's policies and procedures advance the goal of achieving straight-through processing for trades processed through it. Moreover, the CMSP generally should ensure that its systems, operational requirements, and the other choices it makes in designing its services, enable and incentivize prompt and accurate settlement without manual intervention or without automated processes that may result in manual intervention.

For example, a CMSP's policies and procedures generally should explain the criteria that the CMSP applies to determine when a ''match'' has been achieved, including any relevant tolerances that it or its users might apply to achieve a match, and the extent to which such criteria should be standardized or customized.[383] With respect to the use of ETCs that impede the development of STP, and which often rely on legacy technologies, a CMSP's policies and procedures generally should establish a timeline for transitioning users away from such manual processes to service offerings that can reduce a party's reliance on the manual, often sequential, entry and reconciliation of trade information.[384] Where the CMSP acts as a communication platform for different market participants to transmit messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents, the CMSP generally should consider the extent to which its policies, procedures, and processes restrict, inhibit, or delay the ability of users to transmit such messages used in the preparation or transmission of trades for settlement and have policies and procedures that promote the automated transmission of messages among the relevant parties to a transaction to ensure timely settlement and reduce the potential for errors.

The Commission recognizes it may not be technologically or operationally practicable to eliminate all manual processes immediately. Indeed, in certain circumstances, the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade information and minimize operational or other risks that may prevent settlement. Rule 17Ad–27(a), as adopted, does not require CMSPs to remove a manual process if doing so would clearly undermine the prompt and accurate clearance and settlement of securities transactions. However, where a CMSP continues to permit manual reconciliation or other types of human intervention, it generally should explain in its policies and procedures why those manual processes remain necessary as part of its systems and processes and initiate incremental steps to alleviate the need for any manual process. In addition, the CMSP should consider developing processes that ultimately would eliminate the underlying issues that drive the use of manual processes in order to facilitate a more automated and STP-focused approach.

2. New Rule 17Ad–27(b)—Annual Report

The Commission is retaining the general requirement under proposed Rule 17Ad–27 to require a CMSP to submit a report every twelve months to the Commission that includes specified qualitative and quantitative information used to assess the CMSP's progress in facilitating STP during the twelve-month period covered by the annual report. However, as explained in more detail below, the Commission is making one substantive and several technical modifications to the final rule, as adopted. The purpose of these modifications is to require the CMSPs to disclose qualitative and quantitative information in the annual report. The Commission continues to believe that the annual report component of Rule 17Ad–27(b), as adopted, will enable the Commission to (i) assess the qualitative and quantitative progress made by the CMSP and its users to further STP efforts in the processing of institutional transactions; (ii) evaluate the need for additional regulatory action; and (iii) further its oversight of, and the development of, the national clearance and settlement system.

The Commission is retaining the 12-month reporting timeframe requirement, as proposed, for the annual report under new Rule 17Ad–27(b) for several reasons. First, a yearly review on progress with respect to the CMSP's efforts to facilitate STP should be a sufficient timeframe in which the CMSP is able to consider, develop, and implement iterative improvements over time on a forward-looking basis, while also ensuring that progress towards STP is describable, measureable and implemented as expeditiously and prudently possible. Second, a twelve month period would provide the CMSP with a sufficient look-back period to complete a meaningful review on an organization-wide basis and time to test the efficacy of any material changes to technologies and procedures in the preceding year.

Third, an annual reporting requirement, as opposed to a monthly or semi-annual requirement, should help ensure that the information provided to the Commission reflects meaningful and substantive progress by the CMSP, as opposed to focusing attention on smaller, technical changes in services and policies that would be less relevant or less informative to the CMSP, its users, the Commission, or the public as to their understanding of the overall progress towards achieving straight-through processing by the CMSP. And fourth, the Commission believes that the annual report requirement, as now structured in adopted Rule 17Ad–27, would enable the Commission to evaluate actions taken by the CMSP to ensure compliance with the rule and to help fulfill the Commission's responsibility for oversight of the national clearance and settlement system, both as it relates to the CMSP specifically and the national system more generally.

[383] The use of SSIs is just one of many standardization mechanisms available to assist CMSPs in streamlining their internal operations to reduce reliance on manual processes, which can facilitate STP. Given that individual CMSPs may vary in the services provided or the operations and systems used to provide those services, the Commission does not believe requiring the use of SSI, or any other particular standardization mechanism, in Rule 17Ad–27 would be appropriate. However, to the extent that the use of SSIs is applicable in a particular CMSP's operations, the CMSP generally should consider developing incentives or requirements in its policies and procedures to encourage or compel the use of SSIs. *See supra* note 362.

[384] In its comment letter, DTCC ITP sought more clarity around the Commission's description of the CMSP's role in facilitating a transition away from manual processes, particularly as it relates to ETC services and timelines for transitioning away from manual processes, some of which may not be under the CMSP's control. *See* DTCC ITP April Letter, *supra* note 216, at 7. As discussed above, the Commission is not advocating the elimination of ETC to the extent that its use does not impede the development of STP at the CMSP. In the event that use of the ETC is impeding STP, CMSPs generally should use their expertise to develop an appropriate methodology and timeframe to transition away from the use of such ETC.

New Rule 17Ad–27(b) also retains the general requirement to provide both qualitative and quantitative information in the annual report, as proposed. The Commission believes that both types of analysis are necessary to better explain the current operational environment relative to STP development and the obstacles preventing further STP development, and to provide appropriate context to the metrics, from a current as well as a retrospective and prospective viewpoint. Moreover, the qualitative aspects of the requirements under paragraph (b) will provide the Commission with the CMSP's expertise in the assessments and analysis of its STP progress, providing additional context for the quantitative data required in the annual report.

The Commission also is retaining the provision making the annual report required under adopted Rule 17Ad–27(b) publicly available on its website to enable the public to review and analyze progress on achieving STP.[385] As discussed in the T+1 Proposing Release and detailed below, to the extent that an annual report includes confidential commercial or financial information, a CMSP can request confidential treatment of those specific portions of the report.[386]

To clarify that the content of the annual report requirement is distinct from the policies and procedures requirement (discussed above), the annual report requirement is now designated as new paragraph (b) under the adopted Rule 17Ad–27. Specifically, new Rule 17Ad–27(b), as adopted, requires a clearing agency that provides a central matching service for transactions involving users to submit to the Commission every twelve months a report that includes five component requirements, now delineated as Rule 17Ad–27(b)(1) through (5). Paragraphs (b)(1), (2), and (5) include modified versions of the proposed requirements under proposed Rule 17Ad–27(a), (b), and (c). In addition, new paragraph (b) includes paragraphs (b)(3) and (4) which detail the data elements required in the report, consistent with the discussion in the T+1 Proposing Release but not specified in the rule text as proposed.[387] In particular, paragraphs (b)(3) and (4) incorporate the substance of the recommendations made by DTCC ITP requesting more specificity for the data required to be included in the report under the rule.[388] The Commission believes that these changes are consistent with its intent as to the contents and objective of the annual report, as proposed, and should provide beneficial clarity to CMSPs regarding their obligations under these provisions.

The Commission is also amending paragraph (b) to delete the phrase ''for transactions involving broker-dealers and their customers'' for the same reason it deleted the text in paragraph (a), as discussed in Part V.C.1.

(a) New Rule 17Ad–27(b)(1)—Summary of Policies and Procedures

The first of the five components under adopted Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(1) a summary of its policies and procedures required under adopted Rule 17Ad–27(a), current as of the last day of the twelve month period covered by the report. The Commission is making a technical change to paragraph (b)(1) to clarify that only a ''summary'' of the CMSP's policies and procedures current as of the last day of the twelve month period covered by the report need be included in the report, and not the policies and procedures in their entirety or policies and procedures current under any other timeframe.[389] Today, CMSPs' policies and procedures are not publicly available. By providing a summary of the CMSPs policies and procedures, the Commission, indirect CMSP users, and the public will be able to understand at a high level the important aspects of the CMSP's operations and systems, which the Commission anticipates will in turn facilitate market-wide discussions regarding the adoption of more efficient post-trade processing generally and within the context of using CMSPs for some or all of a market participant's post-trade processing needs specifically. Moreover, this information should help readers of the annual report to be better able to analyze other aspects of the annual report, particularly those related to the quantitative and forward-looking qualitative information required under the rule, as adopted.

The summary description of the CMSP's policies and procedures required by paragraph (b)(1) generally should provide a brief overview of the policies and procedures developed pursuant to new Rule 17Ad–27(a). To the extent applicable, the scope of the summary generally should focus on those aspects of the CMSP's policies and procedures that describe and explain its operations, systems, services, and user obligations generally and those aspects of its policies and procedures that facilitate STP-oriented operations or systems specifically, including any material changes made to the relevant policies and procedures during the reporting period. Because the Commission will make the report publicly available, it would be helpful for a CMSP to orient the information contained in the summary to market participants that engage in the post-trade processing of securities transactions to help ensure that the report is useful and informative to both existing and potential users.

(b) New Rule 17Ad–27(b)(2)—Qualitative Description of STP Progress

The second component of the annual report under adopted Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(2) a qualitative description of the CMSP's progress in facilitating STP during the twelve-month period covered by the report required under paragraph (b)(1). The Commission is modifying the proposed requirement, formerly in proposed Rule 17Ad–27(b), to add the text ''qualitative description'' in new paragraph (b)(2) to clarify the type of information required in the CMSP's description of its progress in facilitating STP during the period covered by the report and to assist CMSP compliance with this provision of the rule.

The qualitative report required under paragraph (b)(2) will provide the Commission and the public with an understanding of the specific actions the CMSP has taken over the twelve-month period covered by the report to facilitate STP. To the extent practicable, the Commission encourages CMSPs to use their expertise to include their assessment of the impact of any actions discussed in the qualitative section of the report on the furtherance of its STP efforts, both as it relates to the CMSP specifically and the markets generally. The Commission and CMSP users will use this information to better understand the CMSP's STP initiatives, as well as encourage market participants to begin analyzing their own internal systems and operations to develop and incorporate more STP-oriented mechanisms themselves. In addition, the qualitative report required under this provision should also help inform

[385] DTCC ITP indicated in its comment letter that it is considering publishing the annual report on its website to provide the public with ready access to the information. *See* DTCC ITP September Letter, *supra* note 325, at 4.

[386] *See* 17 CFR 240.24b–2.

[387] A CMSP generally should include in its report a summary of key settlement data relevant to its STP objective, such as data related to the rates of allocation, confirmation, affirmation, and/or matching achieved via straight-through processing. *See* T+1 Proposing Release, *supra* note 2, at 10459.

[388] *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

[389] Proposed Rule 17Ad–27(a) required that the annual report must include ''[I]t's current policies and procedures for facilitating straight-through processing.'' T+1 Proposing Release, *supra* note 2, at 10459.

an analysis of the quantitative data required under new Rule 17Ad–27(b)(3) and (4) by providing context for the metrics regarding the efficacy of the CMSP's actions to facilitate STP.

A qualitative description of the CMSPs progress during the twelve month period covered by the report generally should describe the services and systems used during the period covered by the report that illustrate the CMSP's progress in facilitating STP, as well as any applicable analysis or additional information that aids in understanding or supporting the qualitative description. This qualitative description should generally focus on the CMSP's progress in facilitating STP with respect to the processes used in the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing. However, the CMSP should consider including any reasonable and applicable indicia of STP progress to supplement their descriptions under paragraph (b).

As is the case with other provisions of adopted Rule 17Ad–27(b), the qualitative description submitted pursuant to Rule 17Ad–27(b)(2) in the first reporting period may benefit from a more robust discussion of the current systems used by the CMSP in order to put a discussion of its STP progress in context.[390] However, the qualitative description in subsequent annual reports should generally be able to build on the initial report by relying on any background or foundational information provided in the initial reporting period, and instead focus primarily on the current year's progress.

(c) New Rule 17Ad–27(b)(3)—Quantitative Data

The third component of the annual report required under adopted Rule 17Ad–27(b) requires the CMSP to include pursuant to new paragraph (b)(3) a quantitative presentation of data that specifies five sets of data. The Commission concurs with DTCC ITP's recommendation that any requirements to include specific data in the annual report should be expressly included in the rule text.[391] While DTCC ITP recommended specifying in the rule certain categories of data, the Commission is opting to break down those categories into the specific data elements described in paragraph (b)(3).[392] Specifying the particular data and metrics will promote the capture of specific, standardized data points relevant to advancing the straight-through processing objective, which should enable more effective comparison and analysis of the data year over year and as between CMSPs. While requiring specific data elements removes some of the CMSP's discretion under the rule to determine how best to quantify advancements related to straight-through processing, the Commission believes that requiring the specific data elements in paragraph (b)(3) is necessary to understand existing market dynamics and, as noted above, to facilitate comparisons across CMSPs and over time.

Accordingly, the Commission is modifying the proposed annual report requirement to add a quantitative data requirement under paragraphs (b)(3)(i) through (v) specifying the key metrics related to the processing of securities transactions at CMSPs that are required in the annual report.[393] Specifically, Rule 17Ad–27(b)(3) requires the CMSP to provide data that includes: (i) the total number of trades submitted to the clearing agency for processing; (ii) the total number of allocations submitted to the clearing agency; (iii) the total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by users; (iv) the percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the time of affirmation on trade date; (v) the percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and (vi) metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that may be used to assess progress in facilitating STP. The data required under this provision should provide baseline information and insight into CMSP's progress with regard to facilitating STP, CMSP user performance, and potential indications of specific impediments in improving efficiencies in the post-trade processing environment.

Although the metrics required under paragraphs (b)(3)(i) through (v) will provide a high-level view of certain functions at the CMSP, the Commission believes this data will objectively demonstrate trends with regard to automation, manual intervention and overall progress towards STP and may provide indications of certain systemic or operational issues impeding the CMSP's STP progress. Defining the specific metrics required in the annual report should also have the effect of promoting consistencies across reporting periods at a single CMSP and across multiple CMSPs, which should in turn improve the Commission's and the public's ability to analyze the data over time. The Commission considers the data requirements under paragraph (b)(3) to be the key information necessary to analyze the CMSP progress in facilitating STP. In the event the CMSP determines that additional data is necessary or would be helpful to support its qualitative descriptions required under Rule 17Ad–27(b)(2) or (5), the Commission encourages the CMSP to include such additional quantitative data under paragraph (b)(3).

With regard to metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that are indications of progress in facilitating STP, as required under paragraph (b)(3)(vi), the Commission has not specified the type of metrics that should be used to comply with this provision of the new rule. CMSPs are encouraged to design metrics specific to their services and users that would best indicate whether users are in fact using manual processes for allocations, confirmations or other processing activities and whether over time these users have migrated to an automated processing that replaced their use of manual processing. For example, DTCC ITP cited to the use of SSI metrics as one such measure, which could provide details on the quality of SSIs established at the CMSP, the use of such SSIs by its users in the actual processing stream, and automation of

[390] For more information related to the content and filing of the initial and subsequent annual reports pursuant to adopted Rule 17Ad–27(c), *see infra* Part V.C.3.

[391] *See* DTCC ITP April Letter, *supra* note 216, at 12; DTCC ITP September Letter, *supra* note 325, at 2–3.

[392] *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

[393] In its initial comment letter, DTCC ITP recommended that the annual report should require the quantitative data in lieu of the policies and procedures and qualitative description requirements. *See* DTCC ITP April Letter, *supra* note 216, at 12. DTCC ITP also recommended that the quantitative aspects of the report should include specified metric categories, in which DTCC ITP suggested specific types of data that should be included in those metric categories. *See* DTCC ITP September Letter, *supra* note 325, at 2. As discussed above, the Commission is opting to require specific data requirements under adopted Rule 17Ad–27(b), in lieu of metric categories. *See supra* notes 391–392 and accompanying text. Most of the data elements incorporated into Rule 17Ad–27(b)(2) and (3) reflect the recommendations made by DTCC ITP. *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

SSIs as possible indicators of STP improvements.[394]

Given that the data required under paragraph (b)(3)(vi) is one of the core measurements central to the objective of Rule 17Ad–27, the Commission encourages CMSPs to design these metrics to be as expansive and granular as reasonably feasible, to better provide a detailed view of the STP progress, and to adjust such metrics as necessary to accommodate the onboarding of new services, technologies or operations. Retaining sufficient continuity year-to-year in the CMSP's metrics could ensure year-over-year measurability of the STP progress made during the time period covered by any particular annual report. Any new metrics added to an annual report covering a particular twelve month period due to a change in the CMSP's services, operations or systems could be discussed in the qualitative description required under new Rule 17Ad–27(b)(5).

(d) New Rule 17Ad–27(b)(4)—Quantitative Data Organization and Categorization

The fourth component of the annual report requires the CMSP to submit, pursuant to Rule 17Ad–27(b)(4), the data sets required by paragraph (b)(3) in the following manner: (i) organized on a month-by-month basis beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of the rule; (ii) separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency; (iii) separated, as appropriate, by asset class; (iv) separated by type of user; and (v) presented on an anonymized and aggregated basis.[395]

The Commission agrees with DTCC ITP that further distinguishing any required data sets by asset class, type of CMSP service used, user type, and presented on an anonymized and aggregated basis, should better demonstrate automation trends and STP progress. The Commission also believes that further subcategorizing the required data as now required under adopted Rule 17Ad–27(b)(4) enables more thorough and useful analysis of the progress toward STP and helps identify potential hindrances in achieving full STP.[396] Organizing each of the data sets required under paragraph (b)(3) to further divide the data on a month-by month basis, and to identify the submission of trades by entity type (*i.e.,* ETC versus matching), user type, and asset class should assist in the Commission's and the public's analysis of the data and more precise identification of any potential sources of issues hindering STP progress. Moreover, the identification of certain subcategories should apprise users and their customers of any issues raised by the data that is specifically applicable to a particular user.

The Commission understands that there may be circumstances when the identification of a particular data set does not lend itself to further subcategorization under paragraph (b)(4)(ii) requiring CMSP service type designation or paragraph (b)(4)(iii) requiring asset class designation. This may be particularly true as CMSPs services and technology evolve to accommodate improvements or changing business or market conditions. For example, a CMSP's ETC or matching service may not perform certain functions that are subject to the data set requirements under paragraph (b)(3). Similarly, a specific CMSP function may involve multiple asset classes and, as a result, may be difficult to parse out in a manner that would aid an analysis of the information or aid in assessing STP progress. In those cases, the CMSP generally should use reasonable efforts to organize the data sets in a manner that best informs the Commission, CMSP users, and the public as to the current and future status of the CMSP's progress in facilitating STP at the CMSP.

To the extent applicable and feasible, subcategorizing data required under paragraph (b)(3) by user type generally should include those entities that are directly interfacing with the CMSP to facilitate allocation, confirmation, affirmation or matching functions for themselves or their clients. Such entities may include investment managers, broker-dealers (in their capacity as executing or prime broker-dealers), and custodians. However, to the extent that other user types, including indirect users of CMSP services, can be identified and distinguished in the data sets required under paragraph (b)(3), the CMSP could consider including those categorizations as well if such information would benefit an analysis of the required data.

The Commission is also adopting new Rule 17Ad–27(b)(4)(v) which requires the information to be presented on an anonymized and aggregated basis.[397] Given that the annual report has information that the Commission believes should be available to the public, and that the Commission would likely sustain a confidential treatment request under 17 CFR 240.24b–2 by the CMSP for sensitive, proprietary and confidential data included in the annual report,[398] the contents of the annual report need to be anonymized and aggregated.

(e) New Rule 17Ad–27(b)(5)—Qualitative Description of STP Facilitation

The fifth component of the annual report under Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(5) a description of the actions the CMSP intends to take to further facilitate STP of securities transactions at the clearing agency during the twelve-month period that follows the period covered by the report. The Commission is adopting this provision generally as proposed, but is making one modification to the proposed rule text by replacing the text ''[T]he steps'' in proposed Rule 17Ad–27(c) with the text ''a description of the actions'' in new paragraph (b)(5). This modification will facilitate a more detailed description of the CMSP's actions to facilitate STP in the upcoming twelve months.

The purpose of paragraph (b)(5) is two-fold. First, the provision is intended to inform the Commission, CMSP users and market participants generally as to the CMSP's intended actions to facilitate STP in the upcoming year. The Commission anticipates that advance notice of a CMSP's intentions to take certain actions oriented toward STP development may allow other market participants to make the necessary changes to accommodate the CMSP's activities and may facilitate innovation to improve other aspects of the post-trade processing environment external to the CMSP, some of which may encourage or allow for future improvements at the CMSP.

Second, new paragraph (b)(5) is intended to encourage CMSPs to develop a culture of focusing on enabling a fully automated STP

[394] *See* DTCC ITP September Letter, *supra* note 325, at 3 for more detail on DTCC ITP's comments related to data requirements in the annual report.

[395] To support transparency around the role and utility of CMSPs and objectively demonstrate trends toward more automation and STP progress, DTCC ITP recommended in its comment letter that the Commission amend proposed Rule 17Ad–27 to include a specific requirement for reporting quantitative data on an anonymized and aggregated level for rates of allocation, confirmation, affirmation, and/or matching that a CMSP has achieved via STP and distinguishing trade information by asset class, type of processing service (*i.e.,* ETC versus matching), and ''customer segment'' (referred to as ''user type'' in Rule 17Ad–27, as adopted). *See* DTCC ITP September Letter, *supra* note 325, at 2.

[396] *See id.*

[397] *See id.; see also* DTCC ITP April Letter, *supra* note 216, at 12.

[398] *See* 17 CFR 240.24b–2.

environment as it considers future developments of its services, operations, and business model. The Commission believes that the CMSP can and should be a leading force in encouraging the development of more efficient, automated, and STP-focused systems in post-trade processing market-wide. While the CMSP does not have control over actions taken or services utilized by its users and their customers, the actions it takes to provide and promote STP services and capabilities at the CMSP level should have a direct impact on its users' and an indirect impact on its users' customers with respect to future developments of their individual internal operations and systems, as well as an impact on the state of post-trade processing within the market as a whole.

In describing the actions it intends to take in the twelve-month period following the period covered by the annual report as required under new Rule 17Ad–27(b)(5), the CMSP should generally consider including any material changes that it intends to make with respect to its policies, procedures, operations, systems or services that relate to the furtherance of facilitating STP. While paragraph (b)(5) requires the CMSP to identify those actions the CMSP will in fact implement during the required timeframe, the CMSP should also consider including those actions that have a high degree of likelihood of being implemented during the timeframe. To the extent practicable and related to STP development, the CMSP should also consider including a summary of the underlying rationale as to why the CMSP intends to take a particular action required to be described under paragraph (b)(5) and a description of the expected impact of any such action or actions as it relates to the CMSP's facilitation of STP.

The Commission anticipates that the metrics required under new Rule 17Ad–27(b)(3) should help inform the CMSP and shape future considerations by providing data that evidences whether progress has made in moving toward full STP during the period covered by the preceding year and what if any obstacles remain that should be analyzed and addressed in future iterations of its services and operations. For example, changes in manual touch rates by user type may indicate issues that can and should generally be addressed on a policy or systems basis to reduce those rates. From a qualitative perspective, CMSPs should consider reviewing their operations on a system-wide basis to design future solutions to address the use of manual processes or automated process that result in manual intervention, with the goal of reducing or eliminating the use of such processes.

3. New Rule 17Ad–27(c)—Timing of Filing Annual Report

The Commission is adopting new Rule 17Ad–27(c) to require that the annual report required under Rule 17Ad–27(b) must be filed with the Commission within 60 days of the end of the twelve-month period covered by the report, and the twelve month period covered by each report must commence on January 1 of the calendar year.[399] The Commission believes that requiring the filing of the annual report within 60 days of the end of the twelve month period covered by the report is an appropriate amount of time because it balances the competing interests of providing the CMSPs sufficient time to compile the data and descriptions required under new Rule 17Ad–27(b) and providing sufficiently recent and relevant data for the Commission and public review and analysis. Moreover, CMSPs may choose to plan and compile the contents of the annual report throughout the reporting year as new relevant data and information becomes available, in part because the CMSPs already provide on a monthly basis some data contemplated in the annual report pursuant to the terms of the exemptive orders. Based on the Commission's experience in requiring other types of clearing agencies to provide financial statements within sixty days of the end of the year,[400] the Commission believes a 60-day period would provide the CMSP sufficient time to compile and complete the remaining portions of the report and seek the appropriate internal approval to file the report with the Commission.

The Commission is also requiring that the time period covered by the annual report contain information relevant to the requirements under new paragraph (b) of Rule 17Ad–27 from January 1 through December 31 of each calendar year. By synchronizing the submission the annual reports to a uniform time frame across all CMSPs, the Commission, CMSP users, and the public will be able to better analyze the data and assess compliance with the rule and progress of the CMSPs, on an individual CMSP level and across all CMSPs, in facilitating STP. In the event there is a partial year on the first year a CMSP is obligated to comply with Rule 17Ad–27(b), then the CMSP should generally file its first annual report to cover that partial year through December 31 of that year.[401]

4. New Rule 17Ad–27(d)—Filing Annual Report in EDGAR and Confidentiality Issues

The Commission is adopting as proposed the provision under proposed Rule 17Ad–27 that requires CMSPs to file the annual report on EDGAR.[402] Pursuant to new Rule 17Ad–27(d), a CMSP is required to submit its annual report to the Commission using EDGAR, and tag the information in the report using the structured (*i.e.,* machine-readable) Inline XBRL data language. Specifically, Rule 17Ad–27(d) requires that the report required under paragraph (b) of the new rule be filed electronically on EDGAR and must be provided as interactive data as required by 17 CFR 232.405 (''Rule 405 of Regulation S–T'') in accordance with the EDGAR Filer Manual.[403]

Using EDGAR will provide the Commission and the public with a centralized, publicly accessible electronic database for the reports, facilitating the use of the reported data on straight-through processing. Moreover, requiring Inline XBRL tagging of the reported disclosures, which would specifically include an Inline XBRL block text tag for each of the required narrative disclosures as well as

[399] DTCC ITP recommended that the Commission should provide further clarification as to when CMSPs would be required to submit their initial annual report to the Commission, as well as the time period applicable to the actual content to be included in initial annual report. DTCC ITP raised concerns that depending on when the initial report was due, the variance in pre and post T+1 implementation data could result in unclear analysis of STP progress. *See* DTCC ITP September Letter, *supra* note 325, at 3. The Commission believes DTCC ITP's concern is addressed, regardless of the time period covered by the initial or subsequent annual reports or whether the data reflects pre or post T+1 implementation, because the data will be presented on a month-by-month basis pursuant to new Rule 17Ad–27(b)(4)(i), and therefore amenable to an analysis on any timeframe.

[400] *See, e.g.,* 17 CFR 240.17Ad–22(c)(2). In the post-trade environment more generally, the Commission also requires security-based swap data repositories to file an annual report with the Commission within sixty days of the end of the fiscal year. *See* 17 CFR 240.13n–11.

[401] For example, the compliance date for adopted Rule 17Ad–27 is May 28, 2024. *See infra* Part VII.D. The first annual report will cover the time period from April 1, 2024, through December 31, 2024.

[402] DTCC ITP did not comment on the use of EDGAR to file the proposed annual report, but did mention in the context of filing on EDGAR that it was considering publishing the annual report on its website. *See* DTCC ITP September Letter, *supra* note 325, at 3.

[403] *See* 17 CFR 232.101 and 232.405. In a non-substantive change from the proposal, rather than adding new 17 CFR 232.409 (''Rule 409 of Regulation S–T''), the Commission is expanding Rule 405 of Regulation S–T to effectuate the Inline XBRL requirement. This approach will be consistent with other Commission rulemakings that have featured Inline XBRL requirements. *See, e.g.,* Exchange Act Release No. 95607 (Aug. 25, 2022), 87 FR 55134, 55196 (Sept. 8, 2022).

detail tags for individual data points, should make the disclosures more easily available and accessible to and reusable by market participants and the Commission for retrieval, aggregation, and comparison across time periods for a single CMSP or across different CMSPs and time periods.[404] Detail tags will also be helpful relative to the disclosure in the annual report of individual data points, including the rates of allocation, confirmation, affirmation, and/or matching achieved via straight-through processing. As a general matter, incorporating submission via EDGAR and requiring Inline XBRL tagging under Rule 17Ad–27 will facilitate access to data included in reports submitted pursuant to the rule in a manner that is machine-readable, human-readable, and accessible via application programming interface where appropriate.[405] In the Commission's view, the Inline XBRL tagging requirement will facilitate efficient analysis of information that CMSPs include in their annual reports, providing CMSP users (*e.g.,* institutional investors and broker-dealers acting on behalf of institutional investors) and the general public greater insight into policies and procedures, progress, quantitative data, and qualitative descriptions related to straight-through processing.

As discussed in the T+1 Proposing Release, the Commission will make the annual report required under adopted Rule 17Ad–27(b) publicly available on its website to enable the public to review and analyze data regarding, and progress towards, straight-through processing.[406] The public availability of the annual report would help inform the public, particularly the direct and indirect users of CMSPs, as to the progress being made each year to advance implementation of STP with respect to the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing. In addition, allowing for additional transparency may facilitate innovation in the public forum as to how CMSPs may improve their systems and services to improve STP specifically, and the institutional processing environment generally.

The Commission does not believe the annual report requires the inclusion of proprietary information, trade secrets, or personally identifiable information. To the extent that an annual report includes confidential commercial or financial information, a CMSP could request confidential treatment of those specific portions of the report.[407]

VI. Impact on Certain Commission Rules, Guidance, and SRO Rules

The Commission stated in the T+1 Proposing Release that the proposed rules and rule amendments may affect compliance with other existing Commission rules and guidance that reference the settlement cycle or settlement processes. The Commission identified a preliminary list of rules that could be affected by a move to a T+1 standard settlement cycle, determined that changes to those rules were not necessary, and solicited comment regarding the potential impact of a T+1 settlement cycle. In response, several commenters identified elements of Commission rules, as well as existing Commission guidance, exemptive relief related to those rules, and staff no-action letters,[408] that may be impacted by shortening the standard settlement cycle to T+1.

A. Regulation SHO

In the T+1 Proposing Release, the Commission identified provisions of Regulation SHO under the Exchange Act that may be impacted by the adoption of a T+1 standard settlement cycle. Certain provisions of Regulation SHO use ''trade date'' and ''settlement date'' to determine the time frames for compliance relating to sales of equity securities and fails to deliver on settlement date. These references are not to a particular settlement cycle (*e.g.,* T+2); however, the time frames for these provisions can change in tandem with changes in the standard settlement cycle.[409] The Commission received the following comments regarding Regulation SHO.

One commenter stated its belief that the Commission should reevaluate the deadlines under Rule 204 in the context of a T+1 settlement cycle.[410] The commenter expressed concern that moving to T+1 would reduce the time available for a bona fide market maker[411] to close out fail-to-deliver

[404] *See* Exchange Act Release No. 10514 (June 28, 2018), 83 FR 40846, 40847 (Aug. 16, 2018). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851. Using Inline XBRL as compared to an unstructured PDF, HTML, or ASCII format requirement for the reports would facilitate analysis of the information contained therein. *Id.* With respect to the metrics concerning the use of manual and automated processes by a CMSP's users required under paragraph (b)(3)(vi)—which may vary across CMSPs—the Commission anticipates that the tagged data will facilitate useful comparisons over time at a particular CMSP, even though it may facilitate only limited comparisons across CMSPs.

[405] These considerations are consistent with objectives of the recently enacted Financial Data Transparency Act (''FDTA''), which concerns the manner in which the Commission collects and disseminates information. The FDTA was signed into law on December 23, 2022, as Title LVIII of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. See James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263 (Dec. 23, 2022). Public Law 117–263, 136 Stat. 2395 (2022). Section 5811 of the FDTA directs the Commission and other covered agencies (*e.g.,* financial regulators) to jointly issue proposed rules for public comment that establish data standards for the collections of information reported to each covered agency by financial entities and for the data collected from covered agencies on behalf of the Financial Stability Oversight Council. The data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. In addition, section 5822 of the Financial Data Transparency Act requires that all public data assets published by the Commission under the securities laws and the Dodd-Frank Act be made available in accordance with specified criteria relating to openness and machine-readability. Section 5811 of the FDTA directs the Commission and other covered agencies (*e.g.,* financial regulators) to jointly issue proposed rules for public comment that establish data standards for the collections of information reported to each covered agency by financial entities and for the data collected from covered agencies on behalf of the Financial Stability Oversight Council. The data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. In addition, section 5822 of the Financial Data Transparency Act requires that all public data assets published by the Commission under the securities laws and the Dodd-Frank Act be made available in accordance with specified criteria relating to openness and machine-readability. *See* 44 U.S.C. 3502(20) (defining the term ''open Government data asset'' to mean, among other things, machine-readable and available (or could be made available) in an open format).

[406] DTCC ITP has indicated that it is considering publishing the report on its website, where it believes that the public will have ready access to the information. *See* DTCC ITP September Letter, *supra* note 325, at 3.

[407] *See* 17 CFR 240.24b–2.

[408] Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these staff documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[409] *See* T+1 Proposing Release, *supra* note 2, at 10444 (discussing the potential impacts of a T+1 standard settlement cycle on the closeout of a fail-to-deliver position under 17 CFR 242.204 (''Rule 204'') and the application of 17 CFR 242.200(g) (''Rule 200(g)'')).

[410] *See* Virtu Financial Letter, *supra* note 16, at 3.

[411] Under Regulation SHO's bona fide market making exceptions, the broker-dealer generally

Continued

positions and could adversely impact the liquidity role those market makers provide.

As discussed in the T+1 Proposing Release,[412] shortening the standard settlement cycle to T+1 would reduce the time frames to effect the closeout of most types of fail-to-deliver positions under Rule 204.[413] The applicable closeout date for a fail-to-deliver position can differ depending on its Rule 204 categorization, including whether it results from a short sale, a long sale, or bona fide market making activity. If a fail-to-deliver position results from bona fide market making activity, the participant must close out the fail-to-deliver position by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Under the current T+2 standard settlement cycle, the closeout for long sales or bona fide market making activity is required by the beginning of regular trading hours on T+5. If the Commission adopts a T+1 standard settlement cycle, this closeout requirement would be shortened from T+5 to T+4.

As explained above, most Rule 204 time frames automatically adjust to a new shortened settlement cycle, and the impact of such an alignment was considered during the rulemaking process for Rule 204 as well as during the proposal of the T+1 cycle. Accordingly, given the time available to comply under a T+1 standard settlement cycle, the Commission does not believe that a reevaluation of the Rule 204 time frames is necessary at this time.[414]

Two commenters addressed the impact of a T+1 settlement cycle to the application of Rule 200(g)(1) as it pertains to loaned but recalled securities. One commenter stated that the move to T+1 will shorten the recall period by one day and recommended that the Commission modify its interpretation in the Regulation SHO Adopting Release regarding the recall period to reflect this shortened period.[415] The other commenter stated that if the standard settlement cycle is shortened to T+1, the requirements under Rule 200(g) may result in a change in the timing by which a broker-dealer would need to initiate a bona fide recall of a loaned security to mark the sale of such loaned, but recalled, security ''long'' for purposes of Rule 200(g)(1).[416] The commenter observed that some broker-dealers may have shortened the previous three business day recall period to two business days under the T+2 standard settlement cycle to ensure settlement on the proper settlement date. The commenter explained that, in a T+1 environment, the recall period would be even shorter, which may limit securities lending participants' ability to comply with these rules. The commenter recommended that, should the implementation of T+1 result in any changes to Regulation SHO, the Commission's guidance regarding classification of the sale of a security that is on loan as ''long'' remain unchanged.

In the T+1 Proposing Release, the Commission discussed the close-out scenarios under Regulation SHO in a T+1 environment and provided a figure to illustrate the timing.[417] To satisfy the requirements of Rule 200(g), it was acknowledged that some broker-dealers may need to initiate a bona fide recall as early as trade date or may choose to modify securities lending agreements to shorten the recall period. Such measures would need to be taken to meet the timing obligations under a T+1 cycle, and the Commission believes that such measures could facilitate the fulfillment of timing obligations without changing the requirements of Regulation SHO or related guidance. The industry used such measures to make a similar successful adjustment in the prior shortening of the settlement cycle from T+3 to T+2, and the Commission believes that such measures could again ensure compliance in a T+1 environment. The Commission will continue to monitor the impact of a T+1 settlement cycle on the ability of broker-dealers to comply with Rule 200(g).

B. Delivery of Rule 10b–10 Confirmations and Prospectuses

As discussed in the T+1 Proposing Release,[418] Rule 10b–10 under the Exchange Act provides customers confirmations of transactions and serves a significant investor protection function.[419] Rule 10b–10 does not directly refer to the settlement cycle,[420] but instead requires that a broker-dealer

should be holding itself out as standing ready and willing to buy and sell the security by continuously posting widely accessible quotes that are near or at the market. The market maker must be at economic risk for such quotes. *See* Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61699 (Oct. 17, 2008) (''2008 Regulation SHO Amendments''); *see also* Exchange Act Release No. 94524 (Mar. 28, 2022), 87 FR 23054, 23068 n.157 (Apr. 18, 2022) (''Dealer Release'') (''Broker-dealers that do not publish continuous quotations, or publish quotations that do not subject the broker-dealer to such risk (*e.g.,* quotations that are not publicly accessible, are not near or at the market, or are skewed directionally towards one side of the market) would not be eligible for the bona-fide market-maker exceptions under Regulation SHO. In addition, broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona-fide market making for purposes of Regulation SHO.''). Thus, a market-maker that continually executed short sales away from its posted quotes would generally be unable to rely on the bona-fide market making exceptions of Regulation SHO. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 n.68 (Aug. 6, 2004). Further, broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona fide market-making for purposes of Regulation SHO. *See, e.g.,* Dealer Release, *supra* note 411, at 23068 n.157. The market-maker must also be engaged in bona fide market making in that security at the time of the short sale for eligibility for the exceptions. *See* 2008 Regulation SHO Amendments, *supra* note 411, at 61699.

[412] *See* T+1 Proposing Release, *supra* note 2, at 10461.

[413] A T+1 standard settlement cycle would reduce close out time frames for all Rule 204 fail-to-deliver positions except those that fall within Rule 204(a)(2).

[414] As discussed in the T+1 Proposing Release, the time frame to recall a loaned security corresponds to the then current standard settlement cycle. As the standard settlement cycle has been modified from T+3 to T+2 to T+1, the Commission has provided additional guidance regarding the probable time frame necessary to recall a loaned security so as to ensure timely delivery to close out a failure to deliver that may have occurred. Extending the time frame to recall a loaned security further could result in failures to deliver not being closed out as is required by Rule 204 of Regulation SHO. *See* T+1 Proposing Release, *supra* note 2, at 10461–62 (stating that previous guidance ''was predicated on the Commission's belief that, under then current industry standards, recalls for loaned securities would likely be delivered within three business days after the initiation of a recall. In that case, a broker-dealer that initiated a bona fide recall by T+2 would receive delivery of loaned securities by T+5 and then be able to close out any failure to deliver on a ''long'' sale of the loaned but recalled securities by the beginning of regular trading hours on T+6, as then required by Rule 204 in a T+3 environment.''); *see also* T+2 Adopting Release, *supra* note 4, at 15578 (stating that ''to the extent that customers have not made timely deliveries and have caused a fail to deliver by a broker-dealer, any indirect impacts on such customers are warranted,'' and expressing specific concerns related to continued failures to deliver further: ''In the Rule 204 Adopting Release, the Commission recognized that requiring broker-dealers to close-out fails to deliver promptly after they occur may result in costs to certain participants, but believed that 'such costs are limited and are justified by the fact that the rule will continue our efforts to achieve our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive 'naked' short selling and, thereby help restore, maintain, and enhance investor confidence in the markets.' '').

[415] *See* Fidelity Letter, *supra* note 16, at 7 (further explaining, ''[w]hile we anticipate that in the early days of the transition to T+1, there may be an increase in fails to deliver, we believe that the Commission's already robust regulatory framework minimizes instances in which a market participant may fail to deliver a security.'').

[416] *See* RMA Letter, *supra* note 16, at 4–5.

[417] *See* T+1 Proposing Release, *supra* note 2, at 10462.

[418] *See id.* at 10463.

[419] 17 CFR 240.10b–10.

[420] Rule 10b–10 was adopted in 1977 before the Commission adopted Rule 15c6–1, establishing the standard settlement cycle of T+3 in 1993. *See* Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 (May 17, 1977).

''gives or sends'' a customer a written confirmation disclosing specified information at or before ''completion of the transaction.'' [421]

The Commission has considered how and when broker-dealers typically comply with the requirement to send out a Rule 10b–10 confirmation when changes have been made to the standard settlement cycle. In 1993, when Rule 15c6–1 was initially adopted, the Commission was aware that broker-dealers typically sent out Rule 10b–10 customer confirmations on the day after trade date.[422] By 2017, when the Commission shortened the standard settlement cycle from T+3 to T+2, the Commission had established a framework for electronic delivery of required information to investors.[423] At that time, the Commission stated that, while broker-dealers may continue to send physical customer confirmations on the day after the trade date, broker-dealers may also send electronic confirmations to customers on the trade date. The Commission also acknowledged that, in a T+2 settlement cycle, broker-dealers would have a shorter timeframe to send out the confirmation but did not believe that a shortened settlement cycle would create problems with regards to a broker-dealer's ability to comply with Rule 10b–10. When proposing T+1, the Commission expressed a similar belief that T+1 would not create a compliance issue for broker-dealers under Rule 10b–10, although broker-dealers would again need to accommodate the shortened timeframes of T+1.[424] The Commission solicited comment on the extent to which the T+1 rule proposals may impact compliance with Rule 10b–10.

One commenter stated that broker-dealers have had challenges at times meeting the Rule 10b–10 requirements under T+2, particularly for postal delivery such as in March 2020 at the beginning of the Covid–19 pandemic, and that the proposed compressed timeframe of T+1 will leave broker-dealers with even less time to correct minor delivery issues.[425] Another commenter responded that shortening the settlement cycle to T+1 will make the delivery of physical confirmations no longer practical or feasible.[426] However, as noted above, Rule 10b–10 requires that a broker-dealer ''give or send'' the confirmation prior to settlement; it does not require that the Rule 10b–10 confirmation be received prior to settlement. Shortening the settlement cycle does not affect the ability of the broker-dealer to give or send Rule 10b–10 confirmations, and therefore does not impact a broker-dealer's ability to comply with Rule 10b–10. Accordingly, the Commission believes it is unnecessary to modify Rule 10b–10 to facilitate an effective transition to a T+1 standard settlement cycle. In addition, to the extent that a broker-dealer and its customer would like to ensure that the customer receives Rule 10b–10 confirmation documents prior to settlement, as explained above and discussed further below, broker-dealers and their customers have the option to establish an arrangement for electronic delivery.

The Commission requested comment on whether guidance regarding ''delivery'' for electronic confirmations under Rule 10b–10 needed to be updated to facilitate a T+1 standard settlement cycle.[427] In the context of sending Rule 10b–10 confirmations and prospectus delivery obligations (discussed further below in Part VI.C), several commenters asked that the Commission consider, on a wider basis, making electronic delivery (''e-delivery'') the default method for communicating with investors or customers.[428] The Commission observes that broker-dealers already may use ''e-delivery'' to provide this information to investors.[429] The Commission believes that considering widespread changes to e-delivery standards is not appropriate in the context of shortening the settlement cycle because it is not necessary to establish an e-delivery default to shorten the standard settlement cycle to T+1. In a T+1 environment, no Commission rule would require the delivery of paper documentation by mail on T+1. Moreover, the issues associated with e-delivery are complex and multi-faceted, affecting a wide range of disclosure documents, and imposing a range of potential impacts on investors who currently receive physical documents.[430] The Commission believes considering changes to existing guidance warrants further consideration. Accordingly, the Commission declines to make such change to the existing guidance in this rulemaking.

One commenter sought assurance that moving to T+1 would not affect existing no-action letters and exemptive relief under Rule 10b–10 for dividend reinvestment programs (''DRIP'') that allow monthly account statements for trade activity.[431] The Commission observes that a shorter settlement cycle would not change the relevant facts and circumstances described in the applicable staff no-action letters or exemptive relief regarding the application of Rule 10b–10 to DRIP transactions.

C. Other Prospectus Delivery Matters

As stated in the T+1 Proposing Release,[432] broker-dealers have to comply with prospectus delivery obligations under the Securities Act.[433]

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[421] Generally, 17 CFR 240.15c1–1 (''Rule 15c1–1'') defines ''completion of the transaction'' to mean the time when: (i) a customer purchasing a security pays for any part of the purchase price after payment is requested or notification is given that payment is due; (ii) a security is delivered or transferred to a customer who purchases and makes payment for it before payment is requested or notification is given that payment is due; (iii) a security is delivered or transferred to a broker-dealer from a customer who sells the security and delivers it to the broker-dealer after delivery is requested or notification is given that delivery is due; or (iv) a broker-dealer makes payment to a customer who sells a security and delivers it to the broker-dealer before delivery is requested or notification is given that delivery is due. *See* 17 CFR 240.15c1–1(b).

[422] *See* T+1 Proposing Release, *supra* note 2, at 10463.

[423] *See, e.g.,* Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (providing Commission views on electronic delivery of required information by broker-dealers, transfer agents, and investment advisers); *see also* T+1 Proposing Release, *supra* note 2, at 10643 n.222.

[424] *See* T+1 Proposing Release, *supra* note 2, at 10463.

[425] *See* letter from Kenneth E. Bentsen, Jr., President and Chief Executive Officer, Securities Industry and Financial Markets Association (Aug. 3, 2022), at 2 (''SIFMA August 3rd Letter'').

[426] *See* AGC April Letter, *supra* note 16, at 3.

[427] *See* T+1 Proposing Release, *supra* note 2, at 10463 n.222.

[428] *See* SIFMA August 3rd Letter, *supra* note 425, at 1 (stating that this acceleration of the settlement cycle heightens the need for the Commission to modernize its rules to make e-delivery the default mechanism for transmitting investor communications and disclosures); ICI Letter, *supra* note 16, at 11–12 (recommending that e-delivery should be the default method for delivering Rule 10b–10 confirmations); ASA Letter, *supra* note 16, at 3 (stating that, given the growing preferences of investors to receive such documentation electronically, it would be cost-effective and in the best interest of investors to allow e-delivery to be the default option for sending prospectuses and trade confirmations, adding that investors who wish to receive paper documents would still be afforded the ability to opt-in to receive paper).

[429] *See* T+1 Proposing Release, *supra* note 2, at 10463 n.222.

[430] Among other things, considering a transition to e-delivery by default would need to assess the implication of such a change with regard to the timing, format, and delivery mechanism, and those implications may differ among different types of documents, depending on the nature and purpose of the document. Another issue to consider would be how e-delivery by default would affect investor engagement with important information.

[431] SIFMA April Letter, *supra* note 16, at 15.

[432] T+1 Proposing Release, *supra* note 2, at 10464.

[433] 15 U.S.C. 77a *et seq.* Section 5(b)(2) of the Securities Act makes it unlawful to deliver (*i.e.,* as part of settlement) a security ''unless accompanied

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The regulations at 17 CFR 230.172 (''Securities Act Rule 172'') implement an ''access equals delivery'' model that permits, with certain exceptions, final prospectus delivery obligations to be satisfied by the filing of a final prospectus with the Commission, rather than delivery of the prospectus to purchasers.[434] The Commission stated its preliminarily belief that a T+1 standard settlement cycle would not raise any significant legal or operational concerns for issuers or broker-dealers to comply with the prospectus delivery obligations under the Securities Act.[435] The Commission also requested comment on the following: (i) whether any specific legal or operational concerns would arise for issuers or broker-dealers to comply with the prospectus delivery obligations under the Securities Act if the settlement cycle is shortened to T+1, and (ii) the extent to which the T+1 rule proposals may impact compliance with the prospectus delivery requirements under the Securities Act.

One commenter stated that the requirements of 17 CFR 240.15c2–8(b) should not apply in a T+1 environment.[436] Under Exchange Act Rule 15c2–8(b), with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act,[437] unless the issuer has been exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Exchange Act,[438] a broker-dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation (''48-hour preliminary prospectus delivery requirement'').[439] The commenter stated that in a T+1 settlement cycle, many broker-dealers will send confirmations on trade date to achieve settlement by T+1, and that Rule 15c2–8 does not reflect present-day offering procedure timelines, public availability of preliminary prospectuses on EDGAR, or electronic delivery facilities.[440] However, because the Commission is adopting a T+2 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET, and not a T+1 standard settlement cycle for these offerings, in final Rule 15c6–1(c),[441] no inconsistency exists between the requirements set forth in the final amendments to Rule 15c6–1 and existing Rule 15c2–8(b). Accordingly, the Commission does not believe that Rule 15c2–8 should be modified.

D. Financial Responsibility Rules for Broker-Dealers

As noted in the T+1 Proposing Release, certain provisions of the broker-dealer financial responsibility rules under the Exchange Act [442] reference explicitly or implicitly the settlement date of a securities transaction.[443] For example, paragraph (m) of 17 CFR 240.15c3–3 references the settlement date to prescribe the timeframe in which a broker-dealer must complete certain sell orders on behalf of customers.[444] Specifically, Rule 15c3–3(m) provides that if a broker-dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason the broker-dealer has not obtained possession of the securities from the customer within ten business days after the settlement date, the broker-dealer must immediately close the transaction with the customer by purchasing securities of like kind and quantity.[445] In addition, settlement date is incorporated into paragraph (c)(9) of 17 CFR 240.15c3–1,[446] defining what it means to ''promptly transmit'' funds and ''promptly deliver'' securities within the meaning of paragraphs (a)(2)(i) and (v) of Rule 15c3–1.[447] The concepts of promptly transmitting funds and promptly delivering securities are incorporated in other provisions of the financial responsibility rules as well, including paragraphs (k)(1)(iii) and (k)(2)(i) and (ii) of Rule 15c3–3,[448] paragraph (e)(1)(i)(A) of 17 CFR 240.17a–5,[449] and paragraph (a)(3) of 17 CFR 240.17a–13.[450]

The Commission requested comment regarding the potential impact that shortening the standard settlement cycle from T+2 to T+1 may have on the ability of broker-dealers to comply with the financial responsibility rules. The Commission received one comment stating that shortening the standard settlement cycle to T+1 would reduce the number of days available to a broker-dealer to obtain possession or control of customer securities before being required to close out a customer transaction under Rule 15c3–3(m).[451] The commenter indicated that it did not believe T+1 would materially burden broker-dealers or their customers and did not recommend changes to the rule.[452]

The commenter also recommended that the Commission revisit Rule 15c3–3(d).[453] Under Rule 15c3–3(d), not later than the next business day, a broker or dealer, as of the close of the preceding business day, must determine from its books or records the quantity of fully paid securities and excess margin securities in its possession or control and the quantity of fully paid securities and excess margin securities not in its possession or control.[454] According to the commenter, existing interpretative guidance allows a firm to release securities a day prior to settlement, under certain conditions. The commenter said that it is not clear what this guidance means in a T+1 environment. The commenter offers an example: if segregation of customer assets is based on an end of day market value and end of day cash settled, it is not clear how the segregation of assets should be calculated and enforced in a T+1 environment.[455] The commenter

or preceded'' by a prospectus that meets the requirements of section 10(a) of the Securities Act (known as a ''final prospectus''). 15 U.S.C. 77e(b)(2).

[434] 15 U.S.C. 77e(b)(2). Under Securities Act Rule 172(b), an obligation under section 5(b)(2) of the Securities Act to have a prospectus that satisfies the requirements of section 10(a) of the Securities Act precede or accompany the delivery of a security in a registered offering is satisfied only if the conditions specified in paragraph (c) of Rule 172 are met. 17 CFR 230.172(b). Pursuant to Rule 172(d), ''access equals delivery'' generally is not available to the offerings of most registered investment companies (*e.g.,* mutual funds), business combination transactions, or offerings registered on Form S–8. 17 CFR 230.172(d). The Commission recently amended Rule 172 to allow registered closed-end funds and business development companies to rely on the rule. *See* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020), 85 FR 33353 (June 1, 2020).

[435] T+1 Proposing Release, *supra* note 2, at 10464.

[436] SIFMA April Letter, *supra* note 16, at 13–14.

[437] 15 U.S.C. 78m(a); 15 U.S.C. 78*o*(d).

[438] 15 U.S.C. 78*l*(h).

[439] Exchange Act Rule 15c2–8(b).

[440] SIFMA April Letter, *supra* note 16, at 14.

[441] *See supra* Part II.C.4.

[442] For purposes of this release, the term ''financial responsibility rules'' includes any rule adopted by the Commission pursuant to section 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Exchange Act, any rule adopted by the Commission relating to hypothecation or lending of customer securities, or any rule adopted by the Commission relating to the protection of funds or securities. The Commission's broker-dealer financial responsibility rules include 17 CFR 240.15c3–1, 240.15c3–3, 240.17a–3, 240.17a–4, 240.17a–5, 240.17a–11, and 240.17a–13.

[443] *See* T+1 Proposing Release, *supra* note 2, at 10462–63.

[444] Exchange Act Rule 15c3–3(m).

[445] However, paragraph (m) of Rule 15c3–3 provides that the term ''customer'' for the purpose of paragraph (m) does not include a broker or dealer who maintains an omnibus credit account with another broker or dealer in compliance with 12 CFR 220.7(f) (Rule 7(f) of Regulation T).

[446] Exchange Act Rule 15c3–1(c)(9).

[447] 17 CFR 240.15c3–1(a)(2)(i) and (v).

[448] 17 CFR 240.15c3–3(k)(1)(iii), (k)(2)(i)–(ii).

[449] Rule 17a–5(e)(1)(i)(A).

[450] Rule 17a–13(a)(3).

[451] *See* Fidelity Letter, *supra* note 16, at 7.

[452] *Id.* at 7–8.

[453] *Id.* at 8.

[454] 17 CFR 240.15c3–3(d)(1).

[455] *See* Fidelity Letter, *supra* note 16, at 8.

requested that the Commission work with broker-dealers to better understand the timeframes involved in the segregation process and how they can operate in a T+1 environment. The Commission expects that the staff will continue to monitor the impact of a T+1 settlement cycle on this rule.

E. Changes to SRO Rules and Operations

In the T+1 Proposing Release, the Commission stated that, as with the T+2 transition, it anticipated that the proposed transition to T+1 would require changes to SRO rules and operations to achieve consistency with a T+1 standard settlement cycle.[456] Certain SRO rules reference existing Rule 15c6–1 or currently define ''regular way'' settlement as occurring on T+2 and, as such, may need to be amended in connection with shortening the standard settlement cycle to T+1.[457] Certain timeframes or deadlines in SRO rules also may refer to the settlement date, either expressly or indirectly. In such cases, the SROs may need to amend these rules in connection with shortening the settlement cycle to T+1.[458]

In addition, the Commission also stated that SRO rules and operations may be affected to a greater extent than occurred during the T+2 transition, in part because the Commission has proposed more rule changes in the T+1 Proposing Release than in the T+2 Proposing Release.[459] For example, Financial Industry Regulatory Authority (''FINRA'') Rule 11860, which could be used to facilitate compliance with proposed Rule 15c6–2, currently requires that affirmations be completed no later than the day after trade date and therefore may need to be amended to align with the requirements in final Rule 15c6–2. The Commission solicited comment on the extent to which the T+1 rule proposals may impact existing SRO rules and operations.[460]

While urging the Commission to implement T+1, one commenter requested that the Commission deny or delay implementation of a National Securities Clearing Corporation (''NSCC'') rule to enhance capital requirements, stating that the NSCC rule would undermine the benefits of T+1 and that the calculation method is flawed.[461] The Commission has completed its review of the NSCC proposed rule change and consideration of the comments on the proposal,[462] and the Commission issued an approval order finding that the NSCC proposed rule change was consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NSCC.[463] Furthermore, the rule change concerned membership standards at NSCC related to minimum capital requirements, designed to ensure that capital requirements applied to NSCC members appropriately incorporate the risks of their clearing activity, has already been implemented, and has no bearing on the length of the settlement cycle.

In the context of corporate action events, one commenter advocated for more standardized practices, urging the Commission to consider more automation and transparency in issuer declarations of events to improve timeliness as well as support various SROs in adjusting certain rules related to the processing of events (*e.g.,* FINRA Rules 11140 and 11810).[464] The commenter did not make any specific suggestion for policy action regarding corporate action events that should be taken in connection with the current rulemaking or the transition to a shorter settlement cycle, and the Commission is not taking additional action at this time.

In the T+1 Proposing Release, the Commission asked whether the DTC's ''cover/protect'' process for certain voluntary reorganizations including tenders, exchanges, or rights offerings would be affected operationally or need to be changed in under a T+1 settlement cycle.[465] One commenter claimed that the cover/protect period is inconsistently applied currently for many offers and recommended that, to the extent cover/protect periods will remain in effect, they should be aligned to the new T+1 settlement cycle.[466] The commenter, however, did not identify any specific instances where the T+1 settlement cycle would give rise to issues with the ''cover/protect'' process. In 2022, DTCC issued two reports identifying the functional changes at NSCC, DTC, and DTCC ITP that will be implemented for T+1, including the planned approach to the cover/protect process.[467] Such planning documents can help market participants understand and prepare for potential changes to processes like the cover/protect process. If during implementation specific issues arise, the Commission encourages industry participants to bring them to the attention of Commission staff. Accordingly, the Commission is not at this time providing additional guidance.

One commenter stated that it appreciates the support of the Commission in the dematerialization of physical certificates, and the commenter requested continuing support for the electronic movement of securities, stating its support for the use of electronic medallion signature guarantees and a central hub to move documents between financial institutions that is secure and contains an audit trail of the receipt of documentation. As stated in the T+1 Proposing Release, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities and has acknowledged that the use of certificates increases the costs and risks of clearing and settling securities for all parties processing the securities, including those involved in the U.S. system for clearance and settlement.[468]

[456] *See* T+1 Proposing Release, *supra* note 2, at 10464.

[457] *See, e.g.,* Exchange Act Release No. 79734 (Jan. 4, 2017), 82 FR 3030 (Jan. 10, 2017) (File No. SR–NSCC–2016–009).

[458] The T+1 Report similarly indicates that SROs will likely need to update their rules to facilitate a transition to a T+1 standard settlement cycle. *See* T+1 Report, *supra* note 61, at 35–36.

[459] *See* T+1 Proposing Release, *supra* note 2, at 10464 (discussing the same); *see also* T+2 Adopting Release, *supra* note 4, at 15568–75 (discussing the effect of the T+2 transition on SRO rules and operations).

[460] T+1 Proposing Release, *supra* note 2, at 10464.

[461] Wilson-Davis Letter, *supra* note 16, at 1.

[462] Comments responding to the NSCC rule proposal are available at *https://www.sec.gov/comments/sr-nscc-2021-016/srnscc2021016.htm.*

[463] *See* Exchange Act Release No. 95618 (Aug. 26, 2022); 87 FR 53796 (Sept. 1, 2022) (SR–NSCC–2021–016) (approving proposed rule change to enhance capital requirements and make other changes); *see also* Exchange Act Release No. 93856 (Dec. 22, 2021), 86 FR 74185 (Dec. 29, 2021) (SR–NSCC–2021–016) (publishing notice of filing and soliciting public comment); Exchange Act Release No. 94068 (Jan. 26, 2022), 87 FR 5544 (Feb. 1, 2022) (SR–NSCC–2021–016) (designating a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove); Exchange Act Release No. 94494 (Mar. 23, 2022), 87 FR 18444 (Mar. 30, 2022) (SR–NSCC–2021–016) (instituting proceedings to determine whether to approve or disapprove); Exchange Act Release No. 94168 (June 23, 2022), 87 FR 38792 (June 29, 2022) (SR–NSCC–2021–016) (designating a longer period for Commission action on the proceedings to determine whether to approve or disapprove).

[464] SIFMA April Letter, *supra* note 16, at 14–15.

[465] *See* T+1 Proposing Release, *supra* note 2, at 10452. This procedure enables DTC participants to allow their investors to make or change their final elections until the end of an offer's expiration date; where an offer allows, participants provide DTC with a notice of guaranteed delivery, allowing later delivery of the shares or rights. *See id.; see also* T+1 Report, *supra* note 61, at 20.

[466] *See* SIFMA April Letter, *supra* note 16, at 14.

[467] *See* DTCC, Accelerated Settlement (T+1)—DTC, NSCC and ITP Functional Changes 14–15 (Aug. 2022), *https://www.dtcc.com/-/media/Files/PDFs/T2/T1-Functional-Changes.pdf*; DTCC, T+1 Test Approach 15–16 (Aug. 2022), *https://www.dtcc.com/-/media/Files/PDFs/T2/T1-Test-Approach.pdf* (each discussing changes to the cover/protect process).

[468] T+1 Proposing Release, *supra* note 2, at 10474.

VII. Compliance Dates

A. Exchange Act Rule 15c6–1

In the T+1 Proposing Release, the Commission proposed March 31, 2024 as the compliance date for each of the proposed rules.[469] The Commission received numerous comments regarding the compliance dates for Rules 15c6–1, 15c6–2, and 204–2, generally focused on the impact the proposed compliance date would have on the timing of an industry-wide effort to transition to a T+1 standard settlement cycle. The commenters offered a range of potential alternatives. For example, many individual investors recommended that the Commission accelerate the compliance date so that they and other retail investors could obtain the benefits of a shorter settlement cycle sooner than 2024.[470] One commenter supported the proposed compliance date of March 31, 2024, stating that such a date was generally aligned with the industry-led effort regarding the T+1 transition.[471] Given the extent of planning, operational changes, and testing necessary to achieve a successful and orderly transition to a T+1 standard settlement cycle, as discussed further below, the Commission is moving the compliance date to Tuesday, May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed, providing market participants with a three-day weekend to facilitate the transition to a T+1 standard settlement cycle.

Multiple comments, including those submitted by members of the Industry Working Group (''IWG'') leading at the industry level the effort to facilitate an orderly transition to T+1,[472] recommended specifically that the Commission postpone the compliance date from March 31, 2024, to September 3, 2024.[473] Some commenters recommended that the Commission postpone the compliance date further, to no sooner than two years from the adoption of the proposed rules.[474] In general, a commenter representing the IWG indicated that approximately 16 to 24 months from adoption of a final rule would be necessary to implement a T+1 settlement cycle.[475]

The above commenters provided several reasons for postponing from March to September. First, they prefer to align the transition with the Labor Day holiday weekend so that market participants can implement technology and other changes with the benefit of an extra day when markets would be closed. Some commenters believe that the absence of a three-day weekend would create financial risk for market participants because they would lack sufficient time to validate production changes and validate a ''fall back'' plan to a T+2 standard if necessary in response to any issues that arise.[476] Second, they prefer to enable the U.S. and Canadian markets to complete the transition over a commonly shared holiday weekend, and explain that Labor Day weekend is the only such weekend in 2024.[477] In the commenters' view, the absence of a unified transition in the U.S. and Canada would result in duplicative testing, as well as introduce issues with respect to dual-listed products, depository receipt conversions, ETF creations and redemptions, ADR conversions, buy-ins, and other activities associated with cross-border transactions.[478] Third, they prefer to take more time to complete the transition process, including to budget, design and implement technology and operational changes, to conduct both individual-level and industry-wide testing in advance of the transition, and to educate their customers and market participants generally regarding the operational and other changes necessary to ensure an orderly transition to a T+1 standard settlement cycle.[479] Fourth, they believe that third-party vendors that support the U.S. securities market, including transfer agents and custodians, will not begin to plan for and implement operational changes until the Commission adopts a final rule.[480] The current version of the T+1 Playbook, published by the IWG, and which market participants are using to identify, design, and plan for the individual-level and industry-level implementation of a T+1 standard settlement cycle, contemplates activities, including industry-wide testing, that would continue into third

[469] *Id.* at 10436.

[470] *See, e.g.,* letter from Chris Barnard (Feb. 22, 2022); Mark C. Letter, *supra* note 19; letter from Jacy Carroll (Feb. 19, 2022); letter from Scott Clarke (Feb. 17, 2022); letter from Isaac Crawford (Feb. 20, 2022); letter from Nathan D. (Mar. 8, 2022); letter from Austin Englebert (Feb. 22, 2022); letter from Justina Fullwood (Feb. 17, 2022); letter from Brayan Hernandez (Feb. 17, 2022); Kelley Letter, *supra* note 16; Kyle 1 Letter, *supra* note 16; letter from Jason Layne (Feb. 19, 2022); letter from Jordan Liske (Mar. 3, 2022); letter from Trevor Longmire (Feb. 17, 2022); letter from Joshua Lory (Feb. 20, 2022); Mahdere Letter, *supra* note 18; letter from Cain Maynard (Feb. 17, 2022); letter from Brian Padrick (Feb. 18, 2022); letter from Jimmy Pham (Feb. 18, 2022); letter from Anthony R. (Feb. 18, 2022); Rathbone Letter, *supra* note 18; letter from Brian Renner (Feb. 9, 2022); letter from Daniel Richardson (Feb. 17, 2022); letter from Andrew Robison (Apr. 8, 2022); letter from Michael Ruiz (Feb. 17, 2022); Ryan 1 Letter, *supra* note 16; letter from Adrian Santos (Feb. 17, 2022); letter from Christopher Sneed (Feb. 18, 2022); Stauts Letter, *supra* note 16; Stewart Letter, *supra* note 16; letter from Casey C. Vallett (Feb. 17, 2022); Zach Letter, *supra* note 16.

[471] *See* Better Markets Letter, *supra* note 16, at 5–6.

[472] As discussed in the T+1 Proposing Release, *supra* note 2, at 10445, the IWG is comprised of representatives from SIFMA, ICI, and DTCC, and is being coordinated in part by Deloitte. The IWG published the T+1 Report, *supra* note 61, in September 2021 and the T+1 Playbook, *supra* note 134, in August 2022.

[473] *See, e.g.,* CCMA April Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 12; IAA October Letter, *supra* note 222, at 1–2; ICI Letter, *supra* note 16, at 2, 8; MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 2; SIFMA August 26th Letter, *supra* note 207, at 1; letter from Tom Price, Managing Director, SIFMA, et al (Oct. 10, 2022), at 1 (''The Associations and DTCC Letter''); letter from Ken Bentsen, Jr., President and CEO, SIFMA (Dec. 20, 2022), at 1 (''SIFMA December Letter''); letter from Ken Bentsen, Jr., President and CEO, SIFMA (Feb. 8, 2023), at 1 (''SIFMA February Letter'').

[474] *See, e.g.,* SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 5 (citing the planning, operational changes, and testing necessary for a successful transition).

[475] *See* SIFMA December Letter, *supra* note 473, at 3.

[476] *See id.* at 3; *see also* DTCC Letter, *supra* note 16, at 3 (supporting a three-day weekend to manage operational risks associated with the transition process); IAA April Letter, *supra* note 16, at 8 (supporting a three-day weekend to complete and test changes to systems outside of an active trading day); STA Letter, *supra* note 16, at 2.

[477] *See* SIFMA December Letter, *supra* note 473, at 2; SIFMA February Letter, *supra* note 473, at 1; letter from Christopher Climo, Chief Operating Officer, Investment Industry Association of Canada (Feb. 9, 2023), at 2 (also stating a preference for a long weekend because of the extra day to validate that the transition went as planned, and for avoiding transitions at quarter-ends, such as March 31, because they are significant trading days, as well as corporate action dates).

[478] *See* SIFMA December Letter, *supra* note 473, at 4.

[479] *See, e.g.,* CCMA April Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 12; IAA October Letter, *supra* note 222, at 1–2; ICI Letter, *supra* note 16, at 2, 8; MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 2; SIFMA August 26th Letter, *supra* note 207, at 1; *see also* OCC Letter, *supra* note 16, at 3 (stating that firms may already be engaged in other large technology projects that could impact T+1 readiness); SIFMA December Letter, *supra* note 473, at 2 (stating that firms have planned to complete technology projects related to the LIBOR transition in Q2 2023); SIFMA February Letter, *supra* note 473, at 1 (explaining that the March date ''will pose substantial and unnecessary risk to the marketplace and potentially create an immense amount of fails in the system'' and that ''[w]ithout proper testing, socialization, and notification, U.S. and international markets would be negatively impacted''); letter from Keith Evans, Executive Director, Canadian Capital Markets Association (Feb. 9, 2023), at 1 (explaining that a compliance date in the first quarter would introduce significant risks such as a material increase in failed trades, increased buy-ins, and higher collateral costs for Canadian and American market participants) (''CCMA February Letter''); letter from Deborah Mercer-Miller, Chair, Association of Global Custodians (Feb. 11, 2023) (also stating that a March 31, 2024 compliance date ''could pose significant and unnecessary risk to the market and potentially create a high number of failed trades,'' and expressing concern ''about the ability of smaller market participants, vendors, and other service providers to enable T+1 settlement on a 13-month implementation timetable'').

[480] *See* SIFMA December Letter, *supra* note 473, at 4.

quarter (Q3) 2024.[481] DTCC has also published an industry-wide testing plan that contemplates testing until September 2024,[482] though DTCC has also publicly acknowledged that the ultimate T+1 transition date would depend on the compliance date set by the Commission in this release.[483]

The Commission acknowledges that a three-day weekend that includes a bank holiday will assist market participants in completing the transition to a T+1 standard settlement cycle in an orderly manner. Although March 31, 2024 falls at the end of a three-day weekend commenters noted that this weekend is not a Federal holiday and does not provide a bank holiday, and so the banking industry and U.S. securities markets would not be synchronized in terms of implementing final testing and systems changes.[484] As discussed throughout this section, the Commission is adopting a compliance date of May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed.

The Commission also acknowledges that aligning the U.S. and Canadian transitions would be beneficial to market participants in both markets, reducing complexity with respect to cross-border transactions between the two jurisdictions. The Canadian Securities Authorities proposed in December to implement a T+1 settlement cycle in Canada, explaining that ''the close ties between the Canadian and American markets, in particular the large number of inter-listed securities'' make it ''critical'' for Canadian markets to move in concert with the U.S.[485] The Commission intends to work closely with the relevant Canadian authorities to ensure an orderly transition to T+1 for the securities markets in the U.S. and Canada that minimizes the potential for risk, such as the risks associated with settlement fails.

Some commenters explained that market participants tend to implement technology freezes in the November to February timeframe to minimize the impact of staff on leave during the holidays and to facilitate various year-end accounting activities, including tax preparation.[486] In the view of these commenters, a March 2024 compliance date would require that a substantial portion of technology changes and testing not occur in the November to February window, meaning they may need to occur primarily in March 2024, close in time to the compliance date. The Commission believes that a May 28, 2024, transition date will provide sufficient time beyond the typical November to February technology freeze to ensure an orderly transition. In total, market participants will have more than fifteen months following the adoption of the final rules to take the appropriate steps to implement any technology or other changes to support a T+1 standard settlement cycle, providing a substantial amount of time to plan for and structure any technology freezes and to address personnel shortages while developing, building, testing and implementing technology changes to support a T+1 standard settlement cycle. Market participants should take appropriate steps, mindful of the May 28, 2024 compliance date, to ensure that technology implementation can occur consistent with the compliance date. While a May 28, 2024 compliance date may require market participants to reallocate some resources and reprioritize some technology projects as compared to a September 3, 2024 compliance date, the Commission believes that a May 28, 2024 compliance date would also allow the substantial benefits of shortening the settlement cycle to be achieved sooner.[487]

With respect to the preference for a September 2024 compliance date more generally to ensure appropriate time for sufficient planning, testing, and coordination with third-party vendors,[488] the Commission appreciates that providing a longer implementation period until the compliance date for any rule necessarily provides more time to prepare, test, and educate than a shorter implementation period would. As discussed in the T+1 Proposing Release, however, the Commission's objective is to ensure an orderly transition to a T+1 standard settlement cycle that realizes the substantial benefits of shortening the settlement cycle as soon as possible. In light of its objective of ensuring an orderly transition, the Commission is not accelerating the proposed compliance date, even though many commenters recommended that the Commission pursue a more expeditious timetable for the transition than even March 2024.[489] Given that some market participants expressed interest for a faster transition to a T+1 settlement cycle,[490] the Commission believes that May 28, 2024, provides an effective balance of ensuring that the compliance date provides sufficient time for planning and executing an orderly transition while also promoting an expeditious process that will allow market participants to realize the substantial benefits of shortening the settlement cycle sooner than later. In addition, the Commission believes that the May 28, 2024, compliance date will help ensure that market participants have sufficient time to implement the changes necessary to reduce risk, such as risks associated with the potential for increases in settlement fails. The Commission also believes that the additional time will help ensure that market participants complete appropriate levels of testing, provide timely notice to potentially affected parties and vendors, and, more generally, engage in the education and outreach necessary to ensure an orderly transition.[491]

Some commenters indicated that the Commission should set the compliance date no sooner than two years from the adoption of final rules. As discussed above, while an additional seven months of preparation (*i.e.,* two years from adoption of the final rules) likely would facilitate a higher level of preparation, testing, and education, the Commission believes that providing more than fifteen months until the compliance date for a T+1 standard settlement cycle is sufficient to ensure an orderly transition. Also as discussed above, while fifteen months of

[481] *See* T+1 Playbook, *supra* note 134, at 10–14. The T+1 Playbook was most recently updated in December 2022.

[482] *See* DTCC, DTCC T+1 Test Approach: Detailed Testing Framework (Jan. 2023), *https://www.dtcc.com/ust1/-/media/Files/PDFs/T2/UST1-Detailed-Test-Document* (explaining that the T+1 transition date has yet to be determined, and so for planning purposes the document references a Sept. 3, 2024 transition date).

[483] *See* Richard Schwartz, 'We're halfway through a marathon' says DTCC as it releases document to help preparations for T+1, The Trade, Jan. 24, 2023, *https://www.thetradenews.com/were-halfway-through-a-marathon-says-dtcc-as-it-releases-document-to-help-preparations-for-t1/* (quoting Robert Cavallo, director, clearance and settlement, product management at DTCC as follows: ''We are halfway through a marathon and still have a long way to go, but now that 2024 is in sight—whether that ultimate date is determined to be March or September—we must move from planning and development to testing.'').

[484] *See, e.g.,* SIFMA December Letter, *supra* note 473, at 3.

[485] CSA, Notice and Request for Comment—Proposed Amendments to National Instrument 24–101 Institutional Trade Matching and Settlement and Proposed Changes to Companion Policy 24–101 Institutional Trade Matching and Settlement, Dec. 15, 2022, *https://www.osc.ca/sites/default/files/2022-12/ni_20221215_24-101_rfc_trade-matching-settlement.pdf*.

[486] *See, e.g.,* ICI Letter, *supra* note 16, at 9; *see also* AGC April Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 3–4.

[487] *See infra* Part VIII.C.1 (discussing the anticipated benefits of shortening the settlement cycle).

[488] *See supra* notes 479–480 and accompanying text.

[489] *See supra* note 470 and accompanying text.

[490] *See id.*

[491] *See supra* note 479 and accompanying text.

preparation rather than two years may require some broker-dealers to reallocate some resources or reprioritize some technology projects to meet the May 28, 2024, transition, the Commission believes that the substantial benefits of shortening the settlement cycle would also be achieved sooner with a May 28, 2024, transition.[492]

Accordingly, the compliance date for the amendments to Rule 15c6–1—other than the amendment discussed in Part VII.B below—will be May 28, 2024.

B. Exchange Act Rule 15c6–1(b): Exclusion for Security-Based Swaps

In response to comments received, and as discussed in Parts II.B.2 and II.C.3, the Commission has modified Rule 15c6–1(b) to exclude security-based swaps from the requirements under Rule 15c6–1(a). For the reasons discussed in Part II.C.3, and because Rule 15c6–1(b) concerns the scope of transactions excluded from the requirements of the Rule 15c6–1(a), the amendment will become effective upon the effective date.

C. Exchange Act Rule 15c6–2 and Advisers Act Rule 204–2

With respect to proposed Exchange Act Rule 15c6–2 and the proposed amendments to Advisers Act Rule 204–2, some commenters requested that the Commission set a compliance date later than the compliance date for Rule 15c6–1 to allow market participants time to focus their efforts on the T+1 transition, including the related technology and operational changes that they would need to design, build, test, and implement, without also having to take steps to ensure compliance with respect to same-day allocations, confirmations, and affirmations.[493] The Commission disagrees. Any technology changes, operational changes, or other efforts necessary to advance the same-day affirmation objective should occur in tandem with efforts focused on the T+1 transition, and so the Commission is adopting a May 28, 2024, compliance date for these rules, for the same reasons discussed in Part VII.A. In the Commission's view, market participants are more likely to take steps that materially advance the same-day affirmation objective if they consider such steps alongside a more holistic review and, where necessary, modification of systems and operations to support the standard settlement cycle because, for institutional transactions, allocations, confirmations, and affirmations are integral to the settlement process. The Commission believes that, because the systems and operational changes necessary to facilitate a transition to T+1 standard settlement cycle generally would overlap with the systems that facilitate same-day affirmation, market participants would benefit from considering at the same time changes that can accommodate both sets of requirements.

Accordingly, the compliance date for Rule 15c6–2 and the amendments to Rule 204 will be May 28, 2024.

D. Exchange Act Rule 17Ad–27

The Commission received one comment regarding the compliance date for Rule 17Ad–27, in which the commenter requested that, with respect to Rule 17Ad–27(b) requiring an annual report on straight-through processing, the Commission require submission of the first annual report only after the T+1 transition has been completed because it will help ensure a consistent baseline over time in the data provided by the CMSP as part of its annual report.[494] Because the Commission is adopting a compliance date of May 28, 2024, for Rule 15c6–2 and the amendments to Rules 15c6–1 and 204–2, and the Commission proposed the same compliance date for Rule 17Ad–27 as the other rules and rule amendments, a CMSP would not be required to submit its first annual report until after the T+1 transition has been completed. Accordingly, the Commission believes that a May 28, 2024, compliance date is also appropriate for Rule 17Ad–27 and consistent with the comment received. Consistent with the requirement in Rule 17Ad–27(d) that the report must be filed within 60 days of the end of the twelve-month period covered by the report, the first report must be filed no later than March 1, 2025.

VIII. Economic Analysis

The Commission has prepared an economic analysis in connection with the amendments to Rules 15c6–1 and 204–2 and new Rules 15c6–2 and 17Ad–27. The economic analysis begins with a discussion of the risks inherent in the standard settlement cycle for securities transactions and the impact that shortening the standard settlement cycle may have on the management and mitigation of these risks. Next, the economic analysis summarizes and addresses comments relating to the costs and benefits of a shorter settlement cycle, as well as comments about the economic analysis provided in the T+1 Proposing Release. Finally, the economic analysis discusses certain market frictions that potentially impair the ability of market participants to shorten the settlement cycle in the absence of a Commission rule.

The discussion regarding settlement cycle risks and market frictions frames the Commission's analysis of the rule's benefits and costs in later sections. The Commission believes that the amendment to Rule 15c6–1(a) will ameliorate these market frictions and thus will reduce the risks inherent in settlement. The Commission further believes that the combination of amendments and new rules that it is adopting will advance two longstanding objectives shared by the Commission and the securities industry: the completion of trade allocations, confirmations, and affirmations on trade date (an objective often referred to as ''same-day affirmation'') and the straight-through processing of securities transactions.[495]

After discussing the aforementioned risks and market frictions, the economic analysis provides a baseline of current practices. The economic analysis then discusses the likely economic effects of the amendments and new rules, such as the costs and benefits of the adopted amendments and new rules, as well as its effects on efficiency, competition, and capital formation.[496] The Commission has, where possible, attempted to quantify the economic effects expected to result from the amendments and new rules. However, the Commission is unable to quantify some economic effects because it lacks the information necessary to provide a reasonable estimate. In those instances, the discussion of the economic effects of

[492] *See infra* Part VIII.D.5 (discussing the potential economic effects of a May 28, 2024, compliance date versus a later compliance date).

[493] *See, e.g.*, Fidelity Letter, *supra* note 16, at 12 (stating that ''the proposed Compliance Date should apply only to the proposed move to T+1''); ICI Letter, *supra* note 16, at 5–7 (indicating that efforts to ensure compliance with Rule 15c6–2 would likely divert the time and resources that industry participants need to focus on the transition to T+1 settlement).

[494] *See* DTCC ITP September Letter, *supra* note 325, at 3.

[495] *See* T+1 Proposing Release, *supra* note 2, at 10452–53.

[496] Exchange Act section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Exchange Act section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters, the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

the amendments and new rules is qualitative in nature.

A. Background

As previously discussed, the amendment to Rule 15c6–1(a) prohibits, unless otherwise expressly agreed to by both parties at the time of the transaction, a broker-dealer from effecting or entering into a contract for the purchase or sale of certain securities that provides for payment of funds and delivery of securities later than the first business day after the date of the contract subject to certain exceptions provided in the rule. Several commenters addressed the impact that the length of the settlement cycle would have on risk to central counterparties (''CCPs'') and market participants (including credit, market and liquidity risk),[497] margin requirements,[498] capital liquidity,[499] post-trade processing and operational efficiency,[500] financial stability,[501] and systemic risk in the financial system.[502] In its analysis of the economic effects of the new rules and amendments to existing rules, the Commission has considered the risks that market participants, including broker-dealers, clearing agencies, investment advisers, and institutional and retail investors are exposed to during the settlement cycle and how those risks change with the length of the cycle.

The settlement cycle spans the time between when a trade is executed and when cash and securities are delivered to the seller and buyer, respectively. During this time, each party to a trade faces the risk that its counterparty may fail to meet its obligations to deliver cash or securities. When a counterparty fails to meet its obligations to deliver cash or securities, the non-defaulting party may bear costs as a result. For example, if the non-defaulting party chooses to enter into a new transaction, it will be with a new counterparty and will occur at a potentially different price.[503] The length of the settlement cycle influences this risk in two ways: (i) through its effect on counterparty exposures to price volatility, and (ii) through its effect on the value of outstanding obligations.

First, additional time allows asset prices to move further away from the price of the original trade. For example, in a simplified model, where daily asset returns are statistically independent, the variance of an asset's return over *t* days is equal to *t* multiplied by the daily variance of the asset's return. Thus, when the daily variance of returns is constant, the variance of returns increases linearly in the number of days.[504] In other words, the more days that elapse between when a trade is executed and when a counterparty defaults, the larger the variance of price change will be, and the more likely that the asset's price will deviate from the execution price. The price change could be positive or negative, but in the event of a price increase, the buyer must pay more than the original execution price, and in the event of a price decrease, the buyer may buy the security for less than the original execution price.[505]

Second, the length of the settlement cycle directly influences the quantity of transactions awaiting settlement. For example, assuming no change in transaction volumes, the volume of unsettled trades under a T+1 settlement cycle is approximately half the volume of unsettled trades under a T+2 settlement cycle.[506] Thus, in the event of a default, counterparties would have to enter into a new transaction, or otherwise close out approximately half as many trades under a T+1 standard settlement cycle than under a T+2 standard. This means that for a given adverse move in prices, the financial losses resulting from a counterparty default will be approximately half as large under a T+1 standard settlement cycle.

Market participants manage and mitigate settlement risk in a number of specific ways.[507] Generally, these methods entail costs to market participants. In some cases, these costs may be explicit. For instance, clearing brokers typically explicitly charge introducing brokers to clear trades. Other costs are implicit, such as the opportunity cost of assets posted as collateral or limits placed on the trading activities of a broker's customers.

The Commission believes that, given current trading volumes and complexity, certain market frictions may prevent securities markets from shortening the settlement cycle in the absence of regulatory intervention. The Commission has considered two key market frictions related to investments required to implement a shorter settlement cycle. The first is a coordination problem that arises when some of the benefits of actions taken by one or more market participants are only realized when other market participants take a similar action. For example, under the current regulatory structure, if a particular institutional investor were to make a technological investment to reduce the time it requires to match and allocate trades without a corresponding action by its clearing broker-dealers, the institutional investor cannot fully realize the benefits of its investment, as the settlement process is limited by the capabilities of the clearing agency for trade matching and allocation. More generally, when every market participant must incur costs of an upgrade for the entire market to enjoy a benefit, the result is a coordination problem where each market participant may be reluctant to make the necessary investments until it can be reasonably certain that others will also do so. In general, these coordination problems may be resolved if all parties can credibly commit to the necessary infrastructure investments. Regulatory intervention is one possible way of coordinating market participants to undertake the investments necessary to support a shorter settlement cycle. Such intervention could come through Commission rulemaking or through a coordinated set of SRO rule changes.

In addition to coordination problems, a second market friction related to the

[497] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1, 3; MFA Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3; SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[498] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[499] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[500] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; IAA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; State Street Letter, *supra* note 16, at 4.

[501] *See, e.g.,* ICI Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2.

[502] *See, e.g.,* Fidelity Letter, *supra* note 16, at 2; MFA Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3.

[503] This applies to the general case of a transaction that is not novated to a CCP. As described above, in its role as a CCP, NSCC becomes counterparty to both initial parties to a centrally cleared transaction. In the case of such transactions, while each initial party is not exposed to the risk that its original counterparty defaults, both are exposed to the risk of CCP default. Similarly, the CCP is exposed to the risk that either initial party defaults.

[504] More generally, because total variance over multiple days is equal to the sum of daily variances and variables related to the correlation between daily returns, total variance increases with time so long as daily returns are not highly negatively correlated. *See, e.g.,* Morris H. DeGroot and Mark J. Schervish, Probability and Statistics 216 (Addison-Wesley Publishing Co., 4th ed. 1986).

[505] Similarly, a seller whose counterparty fails faces similar risks with respect to the security price but in the opposite direction.

[506] The relationship is approximate because some trades may settle early or, if both counterparties agree at the time of the transaction, settle after the time limit in Rule 15c6–1(a).

[507] *See* T+2 Proposing Release, *supra* note 4, at 69251 (discussing the entities that compose the clearance and settlement infrastructure for U.S. securities markets).

settlement cycle involves situations where one market participant's investments result in benefits for other market participants. For example, if a market participant invests in a technology that reduces the error rate in its trade matching, not only does it benefit from fewer errors, but its counterparties and other market participants may also benefit from more robust trade matching. However, because market participants do not necessarily take into account the benefits that may accrue to other market participants (also known as ''externalities'') when market participants choose the level of investment in their systems, the level of investment in technologies that reduce errors might be less than efficient for the entire market. More generally, underinvestment may result because each participant only takes into account its own costs and benefits when choosing which infrastructure improvements or investments to make, and does not take into account the costs and benefits that may accrue to its counterparties, other market participants, or financial markets generally.

Moreover, because market participants that incur similar costs to move to a shorter settlement cycle may nevertheless experience different levels of economic benefits, there is likely heterogeneity across market participants in the demand for a shorter settlement cycle. This heterogeneity may exacerbate coordination problems and underinvestment. Market participants that do not expect to receive direct benefits from settling transactions earlier may lack incentives to invest in infrastructure to support a shorter settlement cycle and thus could make it difficult for the market as a whole to realize the overall risk reduction that the Commission believes a shorter settlement cycle may bring.

For example, the level and nature of settlement risk exposures vary across different types of market participants. A market participant's characteristics and trading strategies can influence the level of settlement risk it faces. For example, large market participants will generally be exposed to more settlement risk than small market participants because they trade in larger volume. However, large market participants also trade across a larger variety of assets and may face less idiosyncratic risk in the event of counterparty default if the portfolio of trades that may have to be replaced is diversified.[508] As a corollary, a market participant who trades a single security, in a single direction, against a given counterparty, may face more idiosyncratic risk in the event of counterparty failure than a market participant who trades in both directions with that counterparty.

Furthermore, the extent to which a market participant experiences any economic benefits that may stem from a shortened standard settlement cycle likely depends on the market participant's relative bargaining power. While larger intermediaries may experience direct benefits from a shorter settlement cycle as a result of being required to post less collateral with a CCP, if they do not effectively compete for customers through fees and services as a result of market power, they may pass only a portion of these cost savings through to their customers.[509]

The Commission believes that the amendment to Rule 15c6–1(a), which shortens the standard settlement cycle from T+2 to T+1 may mitigate the market frictions of coordination and underinvestment described above. The Commission believes that by mitigating these market frictions, and for the reasons discussed below, the transition to a shorter standard settlement cycle will reduce the risks inherent in the clearance and settlement process.

The shorter standard settlement cycle might also affect the level of operational risk in the clearance and settlement system. Shortening the settlement cycle by one day will reduce the time that market participants have to resolve any errors that might occur in the clearance and settlement process. Tighter operational timeframes and linkages required under a shorter standard settlement cycle might introduce new fragility that could affect market participants, specifically an increased risk that operational issues could affect transaction processing and related securities settlement.[510]

In part, to lessen the likelihood that shortening the settlement cycle might negatively affect operational risk, the Commission and market participants have emphasized on multiple occasions the importance of accelerating the institutional trade clearance and settlement process by improving, among other things, the allocation, confirmation, and affirmation processes for the clearance and settlement of institutional trades, as well as improvements to the provision of central matching and electronic trade confirmation.[511] A 2010 white paper by Omgeo (now DTCC ITP), published when the standard settlement cycle in the U.S. was still T+3, described same-day affirmation as ''a prerequisite'' of shortening the settlement cycle because of its impact on settlement failure rates and operational risk.[512] According to previously cited statistics published by DTCC in 2011, regarding affirmation rates achieved through industry utilization of a certain matching/ETC provider, on average, 45% of trades were affirmed on trade date, 90% were affirmed by T+1, and 92% were affirmed by noon on T+2.[513] Currently, only about 68% of trades achieve affirmation by 12:00 midnight at the end of trade date.[514] While these numbers have improved over time, the improvements have been incremental and fallen short of achieving an affirmed confirmation by the end of trade date as is considered a securities industry best practice.[515] Accordingly, and as described more fully below, to achieve the maximum efficiency and risk reduction that may result from completing the allocation, confirmation, and affirmation process on trade date, and to facilitate shortening the settlement cycle to T+1 or shorter, the Commission is adopting new Rule 15c6–2 under the Exchange Act to facilitate trade date completion of institutional trade allocations, confirmations, and affirmations. Similarly, the Commission is also adopting new Rule 17Ad–27 under the Exchange Act to facilitate straight-through processing by certain clearing agencies acting as CMSPs.

[508] *See* Ananth Madhavan et al., *Risky Business: The Clearance and Settlement of Financial Transactions* (U. Pa. Wharton Sch. Rodney L. White Ctr. for Fin. Res. Working Paper No. 40–88, 1988), at 4–5, *https://rodneywhitecenter.wharton.upenn.edu/wp-content/uploads/2014/04/8840.pdf*; *see also* John H. Cochrane, Asset Pricing 15 (Princeton Univ. Press rev. ed. 2009) (defining the idiosyncratic component of any payoff as the part that is uncorrelated with the discount factor).

[509] *See infra* Parts VIII.C.1. (Benefits) and VIII.C.2. (Costs).

[510] For example, the ability to compute an accurate net asset value (''NAV'') within the settlement timeframe is a key component for settlement of ETF transactions. *See, e.g.,* Barrington Partners, An Extraordinary Week: Shared Experiences from Inside the Fund Accounting Systems Failure of 2015 (Nov. 2015), *https://www.mfdf.org/docs/default-source/fromjoomla/uploads/blog_files/sharedexperience fromfasystemfailure2015.pdf.*

[511] *See supra* Part III.A.; *see also* T+1 Proposing Release, *supra* note 2, at 10452 nn.146–148 and accompanying text.

[512] Omgeo, *Mitigating Operational Risk and Increasing Settlement Efficiency through Same Day Affirmation (SDA),* at 2, 7 (Oct. 2010) (''Omgeo Study''), *https://www.sifma.org/resources/thought-leader-resource-type/white-papers/.*

[513] DTCC, *Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle,* at 7 (Dec. 2011), *supra* note 263.

[514] DTCC ITP Forum Remarks, *supra* note 264.

[515] *See* T+1 Report, *supra* note 61, at 5.

B. Baseline

The Commission uses as its economic baseline the clearance and settlement process as it exists today. In addition to the current process that was described in the T+1 Proposing Release, the baseline includes rules adopted by the Commission, including Commission rules governing the clearance and settlement system, SRO rules,[516] as well as rules adopted by regulators in other jurisdictions to regulate securities settlement in those jurisdictions. The following section discusses several additional elements of the baseline that are relevant for the economic analysis of the amendment to Rule 15c6–1(a) because they are related to the financial risks faced by market participants that clear and settle transactions and the specific means by which market participants manage these risks.

1. Central Counterparties

NSCC, a subsidiary of DTCC, is a clearing agency registered with the Commission that operates the CCP for U.S. equity securities transactions.[517] One way that NSCC mitigates the credit, market, and liquidity risk that it assumes through its novation and guarantee of trades as a CCP is by multilateral netting of securities trades' delivery and payment obligations across its members. By offsetting its members' obligations, NSCC reduces the aggregate market value of securities and cash it must deliver to clearing members. While netting reduces NSCC's settlement payment obligations by a daily average of 98%,[518] it does not fully eliminate the risk posed by unsettled trades because NSCC is responsible for payments or deliveries on any trades that it cannot fully net. NSCC reported clearing an average of approximately $2.191 trillion each day during the second quarter of 2022,[519] suggesting an average net settlement obligation of approximately $44 billion each day.[520]

The aggregate settlement risk faced by NSCC is also a function of the probability of clearing member default. NSCC manages the risk of clearing member default by imposing certain financial responsibility requirements on its members. For example, as of 2022, broker-dealer members of NSCC that are not municipal securities brokers, and do not intend to clear and settle transactions for other broker-dealers, must have excess net capital of $500,000 over the minimum net capital requirement imposed by the Commission, and $1,000,000 over the minimum net capital requirement if the broker-dealer member clears for other broker-dealers.[521] Furthermore, each NSCC member is subject to other ongoing membership requirements, including a requirement to furnish NSCC with assurances of the member's financial responsibility and operational capability, including, but not limited to, periodic reports of its financial and operational condition.[522]

In addition to managing the member default risk, NSCC also takes steps to mitigate the impacts of a member default. For example, in the normal course of business, CCPs are generally not exposed to market or liquidity risk because they expect to receive every security from a seller they are obligated to deliver to a buyer, and they expect to receive every payment from a buyer that they are obligated to deliver to a seller. However, when a clearing member defaults, the CCP can no longer expect the defaulting member to deliver securities or make payments. CCPs mitigate this risk by requiring clearing members to make contributions of financial resources to the CCP so that it may make payments or deliver securities in the event of a member default. The level of financial resources CCPs require clearing members to commit may be based on, among other things, the market and liquidity risk of a member's portfolio, the correlation between the assets in the member's portfolio and the member's own default probability, and the liquidity of the assets posted as collateral.

2. Market Participants—Investors, Broker-Dealers, and Custodians

As discussed in Part II.B of the proposal, broker-dealers serve both retail and institutional customers.[523] Aggregate statistics from the Board of Governors of the Federal Reserve System suggest that at the end of the second quarter 2022, U.S. households held approximately 40% of the value of corporate equity outstanding, 56% of the value of mutual fund shares outstanding, 2% of the value of corporate and foreign bonds, and 43% of the value of municipal securities, which provides a general picture of the share of holdings by retail investors.[524]

In the third quarter of 2022, approximately 3,500 broker-dealers filed FOCUS Reports [525] with FINRA. These firms varied in size, with median assets of approximately $1.3 million and average assets of approximately $1.6 billion. The top 1% of broker-dealers held 80% of the assets of broker-dealers overall, indicating a high degree of concentration in the industry. Of the approximately 3,500 filers, as of the end of 2021, 92 reported self-clearing public customer accounts and acting as introducing broker and sending orders to another broker-dealer for clearing, 1,114 reported acting only as an introducing broker and sending orders to another broker-dealer for clearing, and 68 reported acting as both.[526] Broker-dealers that identified themselves as self-clearing broker-dealers, on average, had higher total assets than broker-dealers that identified themselves as introducing broker-dealers. While the decision to self-clear

[516] Certain SRO rules currently define ''regular way'' settlement as occurring on T+2 and, as such, would need to be amended in connection with shortening the standard settlement cycle to T+1. *See, e.g.,* MSRB Rule G–12(b)(ii)(B); FINRA Rule 11320(b). Further, certain timeframes or deadlines in SRO rules key off the current settlement date, either expressly or indirectly. In such cases, the SROs may also need to amend these rules. *See* T+1 Proposing Release, *supra* note 2, at 10464.

[517] A second DTCC subsidiary, DTC, also a clearing agency registered with the Commission, operates a central securities depository (''CSD'') with respect to securities transactions in the U.S. in several types of eligible securities including, among others, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, depositary receipts, and money market instruments.

[518] According to the DTCC, centralized multilateral netting reduces the value of payments that need to be exchanged each day by an average of 98%, and netting is particularly important during times of heightened volatility and volume. DTCC, Advancing Together: Leading the Industry to Accelerated Settlement, at 2 (Feb. 2021) (''DTCC White Paper''), *https://www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf.*

[519] *See* DTCC, Fixed Income Clearing Corporation and National Securities Clearing Corporation Public Quantitative Disclosure for Central Counterparties, Q2 2022, at 19 (Sept. 2022) (''DTCC Quantitative Disclosure Results Q2 2022''), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Quantitative-Disclosure-Results-2022Q2-1.pdf.*

[520] Calculated as $2.191 trillion × 2% = $43.82 billion.

[521] For a description of NSCC's financial responsibility requirements for registered broker-dealers, *see* NSCC Rules and Procedures, at 386 (effective Oct. 3, 2022) (''NSCC Rules and Procedures''), *https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.* Pursuant to Rule 11 and Addendum K to NSCC's Rules and Procedures, NSCC guarantees the completion of Continuous Net Settlement System (''CNS'') settling trades (''NSCC trade guaranty'') that have been validated. *Id.* at 108–113, 414.

[522] *See, e.g., id.* at 89.

[523] *See* T+1 Proposing Release, *supra* note 2, at 10439–44.

[524] *See* Board of Governors of the Federal Reserve System, Federal Reserve Statistical Release, Z.1, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, at 121, 122, 130 (Sept. 23, 2021), *https://www.federalreserve.gov/releases/z1/20210923/z1.pdf.*

[525] FOCUS Reports, or ''Financial and Operational Combined Uniform Single'' Reports, are monthly, quarterly, and annual reports that broker-dealers generally are required to file with the Commission and/or SROs pursuant to Exchange Act Rule 17a–5, 17 CFR 240.17a–5.

[526] 68 filers reported clearing public customer accounts via self clearing and via introducing.

may be based on many factors, this evidence is consistent with the argument that there may currently be high barriers to entry for providing clearing services as a broker-dealer.

Clearing broker-dealers face liquidity risks, as they are obligated to make payments to clearing agencies on behalf of customers who purchase securities. As discussed in more detail below, because customers of a clearing broker may default on their payment obligations to the broker, particularly when the price of a purchased security declines before settlement, clearing broker-dealers routinely seek to reduce the risks posed by their customers. For example, clearing broker-dealers may require customers to contribute financial resources in the form of margin to margin accounts, to pre-fund purchases in cash accounts, or may restrict the use of customers' unsettled funds. These measures are in many ways analogous to measures taken by clearing agencies to reduce and mitigate the risks posed by their clearing members. In addition, clearing broker-dealers may also mitigate the risks posed by customers by charging higher transaction fees that reflect the value of the customer's option to default, thereby causing customers to internalize the cost of default that is inherent in the settlement process.[527] While not directly reducing the risk posed by customers to clearing members, these higher transaction fees indirectly reduce that risk by allocating to customers a portion of the expected direct costs of customer default.

Another way the settlement cycle may affect transaction prices involves the potential use of funds during the settlement cycle. To the extent that buyers may use the cash to purchase securities during the settlement cycle for other purposes, they may derive value from the length of time it takes to settle a transaction. Testing this hypothesis, studies have found that sellers demand compensation for the benefit that buyers receive from deferring payment during the settlement cycle and that this compensation is incorporated in equity returns.[528]

The settlement process also exposes investors to certain risks. The length of the settlement cycle sets the minimum amount of time between when an investor places an order to sell securities and when the customer can expect to have access to the proceeds of that sale. Investors take this into account when they plan transactions to meet liquidity needs. For example, under T+2 settlement, investors who experience liquidity shocks, such as unexpected expenses that must be met within one day, could not rely on obtaining funding solely through a sale of securities because the proceeds of the sale would not typically be available until the end of the second day after the sale. One possible strategy to deal with such a shock under T+2 settlement would be to borrow to meet payment obligations on day T+1 and repay the loan on the following day with the proceeds from a sale of securities, incurring the cost of one day of interest. Another strategy that investors may use is to hold financial resources to insure themselves from liquidity shocks.

Some securities transactions depend on an FX transaction to provide the necessary funds. When settlement times for FX transactions are longer than that of the securities transaction it is meant to finance, the purchaser may be required to find an alternative source of funds to settle the securities transaction. The Commission is unable to quantify the fraction of securities trades that depend on a corresponding FX transaction or the relative frequency with which market participants employ alternative methods when FX and securities settlement cycles differ, because it is unaware of a source for data on how securities transactions are funded that would be a necessary prerequisite to providing a reasonable estimate. It is the experience of Commission staff that, for retail investors, many brokers require their retail clients to prefund their transactions including those that require a corresponding FX transaction.

Integral to settlement of institutional trades is achieving an affirmed confirmation, which can require a series of communications between a broker-dealer and its institutional customer. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions.[529] An affirmed confirmation by the end of trade date is considered a securities industry best practice.[530] Currently, despite existing commercial incentives and continuing efforts to promote ''same-day affirmation'' as an industry best practice, only about 68% of trades achieve affirmation on trade date.[531]

In order to deliver shares that a customer has sold, it may be necessary for a broker-dealer to initiate a bona fide recall of a loaned security to be able to mark the sale of such loaned but recalled security ''long'' for purposes of Rule 200(g)(1).[532] Under a T+2 standard settlement cycle, the closeout period for sales marked ''long'' is T+5, and so recalls of loaned securities need to be delivered by T+4 to be available to close out any fails on sales marked ''long'' by the beginning of regular trading hours on T+5. To meet this timeframe, a number of broker-dealers have securities lending agreements that set the period of delivery for delivering loaned but recalled securities to two settlement days after initiation of a recall. The recall of a loaned security does not require that a reason be given so it is not possible to determine the volume of security loan recalls that are initiated in order to complete settlement before the closeout period.

Rule 15c6–1(c) establishes a T+4 settlement cycle for firm commitment underwritings for securities that are priced after 4:30 p.m. Eastern Time (''ET'').[533] Under the rule, the broker or dealer must effect or enter into a contract for the purchase or sale of those securities that provide for payment of funds and delivery of securities no later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Table 1 provides statistics for the number of initial public offerings of equity and aggregate proceeds by year from 2000–2022. The Commission believes that most equity initial public offerings (''IPOs''), particularly larger offerings, are made on a firm commitment basis. Although the Commission is not aware of a comprehensive and accessible database that includes settlement time by offering, it understands that the current market practice for substantially all equity offering is to settle on the current T+2 timeframe, notwithstanding the exceptions provided in Rule 15c6–1(c) for firm commitment offerings priced after 4:30 p.m. ET.[534] The third and fourth columns of Table 1 contain estimates for total IPO proceeds from separate sources using separate

[527] *See infra* Parts VIII.C.2. and VIII.C.4.

[528] *See* Victoria Lynn Messman, Securities Processing: The Effects of a T+3 System on Security Prices (May 2011) (Ph.D. dissertation, University of Tennessee—Knoxville), *http://trace.tennessee.edu/utk_graddiss/1002/*; Josef Lakonishok & Maurice Levi, *Weekend Effects on Stock Returns: A Note,* 37 J. Fin. 883 (1982), *https://www.jstor.org/stable/pdf/2327716.pdf*; Ramon P. DeGennaro, *The Effect of Payment Delays on Stock Prices, 13 J. Fin. Res. 133* (1990), *http://onlinelibrary.wiley.com/doi/10.1111/j.1475–6803.1990.tb00543.x/abstract.*

[529] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[530] *See* T+1 Report, *supra* note 61, at 5.

[531] *See* DTCC ITP Forum Remarks, *supra* note 264.

[532] *See* T+1 Proposing Release, *supra* note 2, at 10461.

[533] 17 CFR 240.15c6–1(c).

[534] *See* T+1 Report, *supra* note 61, at 31. The U.S. moved to the current T+2 settlement in September 2017.

methodologies but show similar patterns. The Commission understands that debt offerings frequently make use of the exception provided by 15c6–1(d) and that substantially all of the purchasers in debt securities offerings are large, sophisticated institutions.

TABLE 1—NUMBER OF INITIAL PUBLIC OFFERINGS AND AGGREGATE PROCEEDS

[2000–2022] [1]

Year	Number of IPOs	Aggregate proceeds ($ billions)	Aggregate proceeds SIFMA ($B)
2000	380	64.80	106.2
2001	80	35.29	46.0
2002	66	22.03	27.2
2003	63	9.54	18.1
2004	173	31.19	50.5
2005	159	28.23	40.7
2006	157	30.48	46.4
2007	159	35.66	52.3
2008	21	22.76	26.7
2009	41	13.17	27.0
2010	91	29.82	43.5
2011	81	26.97	40.1
2012	93	31.11	46.2
2013	158	41.56	60.0
2014	206	42.20	93.5
2015	118	22.00	32.2
2016	75	12.52	20.7
2017	106	22.98	39.2
2018	134	33.47	49.9
2019	112	39.18	48.8
2020	165	61.87	85.4
2021	311	119.36	153.6
2022	39	7.01	8.5

[1] The second and third columns contain estimates derived from IPOs with an offer price of at least $5.00, excluding ADRs, unit offers, closed-end funds, real estate investment trusts (''REITs''), natural resource limited partnerships, small best efforts offers, banks and savings and loans (S&Ls), and stocks not listed in data maintained by the Center for Research in Security Prices (''CRSP'' includes Amex, NYSE, and NASDAQ stocks). Proceeds exclude overallotment options. Estimates from IPO Statistics, Jay Ritter, University of Florida, at 3, *https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf*. The fourth column provides an estimate by SIFMA of total IPO proceeds using their own methodology. The data is available at *https://www.sifma.org/resources/research/us-equity-and-related-securities-statistics/*, but we understand their reported IPO data ''includes rank eligible deals; excludes BDCs, SPACs, ETFs, CLEFs & rights offers.'' See SIFMA Research Quarterly—3Q22 (Oct. 2022), at 5, *https://www.sifma.org/wp-content/uploads/2022/10/US-Research-Quarterly-Equity-2022-10-19-SIFMA.pdf*.

Custodians hold customers' securities for safekeeping in order to minimize the risk of the misappropriation, misuse, or theft.[535] One of the primary responsibilities of a custodian is the tracking, settling, and reconciling of assets that are acquired and disposed of by the investor. In this role, custodians affirm up to 70% of institutional trades [536] and up to 70% of investment adviser trades.[537] There are 48 custodian banks that are members of The Depository Trust Company (''DTC'').

3. Investment Companies and Investment Advisers

Shares issued by investment companies may settle on different timeframes. For example, ETFs, certain closed-end funds, and mutual funds that are sold by brokers generally settle on T+2.[538] By contrast, mutual fund shares that are directly purchased from the fund generally settle on T+1. Mutual funds that settle on a different basis than the underlying investments currently face liquidity risk as a result of a mismatch between the timing of mutual fund share transaction settlement and the timing of fund portfolio security transaction order settlements. Mutual funds may manage these particular liquidity needs by, among other methods, using cash reserves, back-up lines of credit, or interfund lending facilities to provide cash to cover the settlement mismatch.[539] As of the end of 2021, there were 11,577 open-end funds (including money market funds and ETFs).[540] The assets of these funds were approximately $34.2 trillion.[541] Of the 11,577 funds noted, 2,690 were ETFs with combined assets of $7.2 trillion.[542]

Under section 22(e) of the Investment Company Act, an open-end fund generally is required to pay shareholders who tender shares for redemption within seven days of their tender.[543] Open-end fund shares that are sold through broker-dealers must be redeemed within two days of a

[535] Although many securities are held in electronic form, *e.g.,* equities at DTC, the custodian performs similar functions whether the securities are held in physical or electronic form.

[536] *See* DTCC ITP Forum Remarks, *supra* note 264.

[537] *See* IAA April Letter, *supra* note 16, at 4; *see also* ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

[538] The Commission applied Rule 15c6–1 to broker-dealer contracts for the purchase and sale of securities issued by investment companies, including mutual funds, because the Commission recognized that these securities represented a significant and growing percentage of broker-dealer transactions. T+3 Adopting Release, *supra* note 3, at 52900.

[539] *See* Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835 (Sept. 22, 2015), 80 FR 62274, 62285 n.100 (Oct. 15, 2015).

[540] *See* ICI, 2022 Investment Company Fact Book, A Review of Trends and Activities in the Investment Company Industry, at 21 (2022) (''2022 ICI Fact Book''), *https://www.icifactbook.org/pdf/2022_factbook.pdf*. This comprises 8,887 open-end mutual funds, including mutual funds that invest primarily in other mutual funds, and 2,690 ETFs, including ETFs that invest primarily in other ETFs.

[541] *See id.* at 22.

[542] *See id.*

[543] 15 U.S.C. 80a–22(e).

redemption request because broker-dealers are subject to Rule 15c6–1(a).

Furthermore, 17 CFR 270.22c–1,[544] the ''forward pricing'' rule, requires funds, their principal underwriters, and dealers to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to purchase or redeem fund shares, even though cash proceeds from purchases may be invested or fund assets may be sold in subsequent days in order to satisfy purchase requests or meet redemption obligations.

Based on Form ADV filings received through August 31, 2022, the Commission estimates that there are approximately 15,160 advisers registered with the Commission are required to make and keep copies of books and records relating to their advisory business.[545] For any transaction that is subject to the requirements of Rule 15c6–2(a), the final amendments to Rule 204–2 will require registered investment advisers to make and keep copies of confirmations received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. The Commission understands that not all investment advisers may engage in transactions that are subject to the requirements of Rule 15c6–2(a).[546] Of the 15,160 advisers registered with the Commission, we estimate that 12,991 manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a).[547]

One commenter stated that timestamps are already included in electronic communications protocols.[548] As discussed in Part IV.C, the Commission believes that timestamps are generally included in many electronic communications and many advisers currently send allocations and affirmations electronically, though some advisers may not retain these types of records.

4. Current Market for Clearance and Settlement Services

As described in Part II.B of the proposal, two affiliated entities, NSCC and DTC, facilitate clearance and settlement activities in U.S. securities markets in most instances.[549] There is limited competition in the provision of the services that these entities provide. NSCC is the CCP for trades between broker-dealers involving equity securities, corporate and municipal debt, and UITs for the U.S. market. DTC is the CSD that provides custody and book-entry transfer services for the vast majority of securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, ADRs, and ETFs. CMSPs electronically facilitate communication among a broker-dealer, an institutional investor or its investment adviser, and the institutional investor's custodian to reach agreement on the details of a securities trade, thereby creating binding terms.[550] As discussed further in Part III.D of the T+1 Proposing Release, FINRA currently requires broker-dealers to use a clearing agency, such as DTC or a CMSP, or a qualified vendor under the rule to complete delivery-versus-payment transactions with their customers.[551]

In addition, a CMSP may offer a ''matching'' process by which it compares and reconciles the broker-dealer's trade details with the institutional investor's trade details to determine whether the two descriptions of the trade agree, at which point it can generate an affirmation to effect settlement of the trade. As part of such process, the CMSP may offer services that can assist with the automated identification of trades that do not match, allowing market participants to identify errors and remediate any trade information that does not match. Market participants also rely on a variety of ''local'' matching tools that allow them to compare trade information received from another party against their own trade information.[552] These local matching tools often rely on inconsistent SSI data independently maintained by broker-dealers, investment managers, custodians, sub-custodians, and agents on separate databases.[553] As discussed in Part II.B., processing institutional trades requires managing the back and forth involved with transmitting and reconciling trade information among the parties, functionally matching and re-matching with the counterparties to the trade, as well as custodians and agents, to facilitate settlement. It also requires market participants to engage in allocation processes, such as allocation-level cancellations and corrections, some of which are still processed manually.[554]

Broker-dealers compete to provide services to retail and institutional customers. Based on the large number of broker-dealers, there is likely a high degree of competition among broker-dealers. However, the markets that broker-dealers serve may be segmented along lines relevant for the analysis of competitive effects of the amendment to Rule 15c6–1(a). As noted above, the number of broker-dealers that self-clear public customer accounts is smaller than the set of broker-dealers that introduce and do not self-clear. This could mean that introducing broker-dealers compete more intensively for customers than clearing broker-dealers. Further, clearing broker-dealers must meet requirements set by NSCC and DTC, such as financial responsibility requirements and clearing fund requirements. These requirements represent barriers to entry for brokers that may wish to become clearing broker-dealers, limiting competition among such entities.

Competition for customers affects how the costs associated with the clearance and settlement process are allocated among market participants. In managing the expected costs of risks from their customers and the costs of compliance with SRO and Commission rules, clearing broker-dealers decide what fraction of these costs to pass

[544] Rule 22c–1 under the Investment Company Act.

[545] *See infra* note 4 to Table 2.

[546] For more discussion, *see infra* Part IX.A.

[547] *See infra* note 4 to Table 2.

[548] *See* FIX Trading Letter, *supra* note 218; *cf.* a separate commenter stated ''Additional requirements for registered investment advisers to timestamp certain trading records adds further complexity and cost to those managers' efforts.'' *See* AIMA Letter, *supra* note 29, at 2.

[549] *See* T+1 Proposing Release, *supra* note 2, at 10439–40.

[550] *See id.; see also* T+2 Proposing Release, *supra* note 4, at 69246. Although there are three CMSPs, only one is active. That CMSP currently submits nonpublic monthly reports that include data on monthly trade volume processed and affirmations completed on T, T+1, and settlement date.

[551] *See* T+1 Proposing Release, *supra* note 2, at 10458 n.181 and accompanying text.

[552] Local matching platforms include, for example, the trade reconciliation and inventory management tools that market participants use to reconcile trade information. *See* DTCC, Embracing Post-Trade Automation: Seven Ways the Sell-Side Will Benefit from No-Touch Future (Nov. 2020) (''DTCC Embracing Post-Trade Automation''), *https://www.dtcc.com/itp-hub/dist/downloads/broker_supplement_11.11.20z.pdf.* Examples of such service providers include Bloomberg, Corfinancial, Lightspeed, and SS&C Technologies.

[553] *See id.* for more information about the use and impact of ''local'' matching platforms. A 2020 DTCC survey of global broker-dealers found that certain institutional post-trade processing costs could be reduced by 20–25% through leveraging post-trade automation, which would in turn eliminate redundancies and manual processing and mitigate operational risks. *See* DTCC, *DTCC Identifies Seven Areas of Broker Cost Savings as a Result of Greater Post-Trade Automation* (Nov. 18, 2020), *https://www.dtcc.com/news/2020/november/18/dtcc-identifies-seven-areas-of-broker-cost-savings-as-a-result-of-greater-post-trade-automation.*

[554] *See* DTCC, Re-Imagining Post-Trade: No-Touch Processing Within Reach, at 4 (Sept. 2019), *https://www.dtcc.com/-/media/Files/Downloads/Institutional-Trade-Processing/ITP-Story/DTCC-Re-Imagining-Post-Trade.pdf.*

through to their customers in the form of fees and margin requirements, and what fraction of these costs to bear themselves. The level of competition that a clearing broker-dealer faces for customers will dictate the extent to which it is able to pass these costs through to its customers.

In addition, several factors affect the current levels of efficiency and capital formation in the various functions that make up the market for clearance and settlement services. First, at a general level, market participants occupying various positions in the clearance and settlement system must post or hold liquid financial resources, and the level of these resources is a function of the length of the settlement cycle. For example, NSCC collects clearing fund contributions from members to help ensure that it has sufficient financial resources in the event that one of its members defaults on its obligations to NSCC. As discussed above, the length of the settlement cycle is one determinant of the size of NSCC's exposure to clearing members. As another example, mutual funds may manage liquidity needs by, among other methods, using cash reserves, back-up lines of credit, or interfund lending facilities to provide cash. These liquidity needs, in turn, are related to the mismatch between the timing of mutual fund transaction order settlements and the timing of fund portfolio security transaction order settlements.

Holding liquid assets solely for the purpose of mitigating counterparty risk or liquidity needs that arise as part of the settlement process could represent an allocative inefficiency. That is, because firms that are required to hold these assets might prefer to put them to alternative uses, and because these assets may be more efficiently allocated to other market participants who value them for their fundamental risk and return characteristics rather than for their value as collateral. To the extent that any intermediaries between buyer and seller, who facilitate clearance and settlement of the trade, bear costs as a result of inefficient allocation of collateral assets, these inefficiencies may be reflected in higher transaction costs.

The settlement cycle may also have more direct impacts on transaction costs. As noted above, clearing broker-dealers may charge higher transaction fees to reflect the value of the customer's option to default and these fees may cause customers to internalize the cost of the default options inherent in the settlement process. However, these fees also make transactions more costly and may influence the willingness of market participants to efficiently share risks or to supply liquidity to securities markets. Taken together, inefficiencies in the allocation of resources and risks across market participants may serve to impair capital formation.

Finally, market participants may make processing errors in the clearance and settlement process.[555] Market participants have stated that manual processing and a lack of automation result in processing errors.[556] Although some of these errors may be resolved within the settlement cycle and not result in a failed trade, those that are not may result in failed trades, which appear in the failure to deliver data.[557] Further, market participants may incorporate the likelihood that processing errors result in delays in payments or deliveries into securities prices.[558] Figure 1 shows total fails to deliver in shares at mid-month and end-of-month from January 2016 through mid-December 2022. The change in the U.S. settlement cycle from T+3 to T+2 became effective in September 2017. Although processing errors are only one reason a trade may result in a fail to deliver, there is no marked change in the fails data around the previous shortening of the settlement cycle.

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[555] *See, e.g.,* Omgeo Study, *supra* note 512, at 12; *see also* T+1 Report, *supra* note 61, at 26.

[556] Matthew Stauffer, Managing Director, Head of Institutional Trade Processing at DTCC, stated, ''The findings of our survey highlight the benefits of leveraging automated post-trade solutions to reduce the costs of operational functions and the risk inherent in manual processes.'' *See DTCC Identifies Seven Areas of Broker Cost Savings as a Result of Greater Post-Trade Automation, supra note 524.*

[557] *See* Statement by The Depository Trust & Clearing Corporation, U.S. Securities and Exchange Commission Securities Lending and Short Sales Roundtable, at 3 (Sept. 30, 2009), *https://www.sec.gov/comments/4-590/4590-32.pdf*; *see also* T+1 Report, *supra* note 61, at 26.

[558] *See* Messman, *supra* note 528.

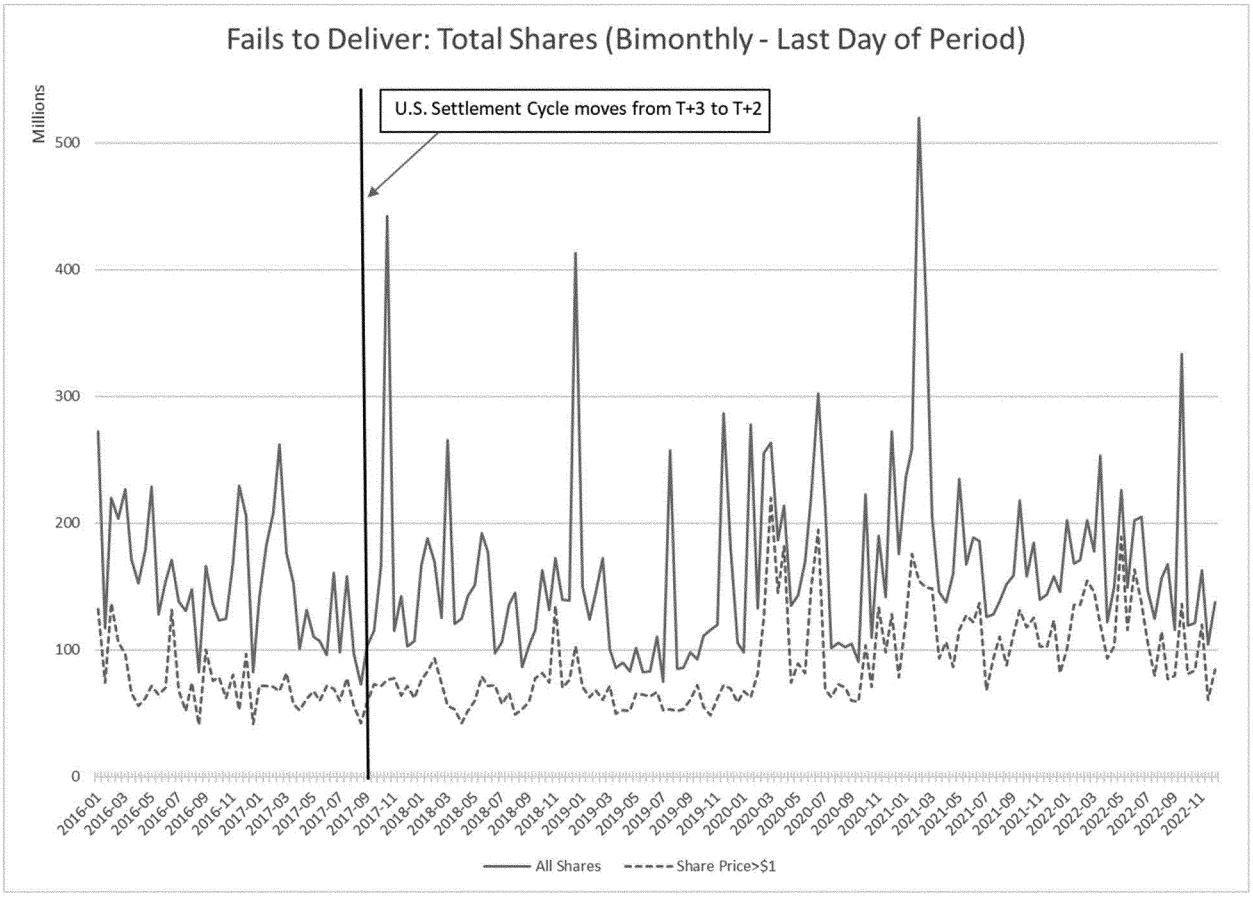

Figure 1. *Outstanding fails to deliver in shares.*
Total fails-to-deliver in shares represents the aggregate net balance of shares that failed to be delivered as of the last trading day prior to mid-month and the last trading day prior to the end of the month recorded in the NSCC CNS system. "Share Price>$1" or "Share Price greater than $1" includes only fails-to-deliver for shares with a closing price greater than $1 as of the end of the period. The data is available at https://www.sec.gov/data/foiadocsfailsdatahtm.

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C. Analysis of Benefits, Costs, and Impact on Efficiency, Competition, and Capital Formation

1. Benefits

Several commenters noted that shortening the settlement cycle would reduce the risks associated with the settlement cycle.[559] Shortening the settlement cycle should reduce both the aggregate market value of all unsettled trades and the amount of time that CCPs, or the counterparties to a trade, may be subject to market and credit risk from an unsettled trade.[560] First, holding transaction volumes constant, the market value of transactions awaiting settlement at any given point in time under a T+1 settlement cycle will be approximately one half lower than under the current T+2 settlement cycle. Using the risk mitigation framework described in Part VIII.B.1, based on published statistics from the second quarter of 2022,[561] and holding average dollar volumes constant, the aggregate notional value of unsettled transactions at NSCC is estimated to fall from nearly $88 billion to approximately $44 billion.[562]

Second, a market participant that experiences counterparty default and enters into a new transaction under a T+2 settlement cycle is exposed to more market risk than would be the case under a T+1 settlement cycle. As a result, market participants that are exposed to market, credit, and liquidity risks would be exposed to less risk under a T+1 settlement cycle. This reduction in risk may also extend to mutual fund transactions conducted with broker-dealers that currently settle on a T+2 basis.[563] To the extent that these transactions currently give rise to counterparty risk exposures between mutual funds and broker-dealers, these exposures may decrease as a consequence of a shorter settlement cycle. In addition, a shorter standard settlement cycle should reduce liquidity risks that could arise by allowing investors to obtain the proceeds of securities transactions sooner. These

[559] *See supra* notes 497–502.

[560] *See* T+1 Proposing Release, *supra* note 2, at 10447–48.

[561] *See* DTCC Quantitative Disclosure Results Q2 2022, *supra* note 519, at 14.

[562] *See id.* at 20.

[563] In today's environment, ETFs and certain closed-end funds clear and settle on a T+2 basis. Open-end funds (*i.e.,* mutual funds) generally settle on a T+1 basis, except for certain retail funds which typically settle on T+2. Thus, the proposed amendment to Rule 15c6–1(a) would require ETFs, closed-end funds, and mutual funds settling on a T+2 basis to revise their settlement timeframes.

risks affect all market participants, are difficult to diversify away, and require resources to manage and mitigate.

CCPs require clearing members to post financial resources in order to secure members' obligations to deliver cash and securities to the CCP. Clearing members in turn impose fees on their customers, *e.g.,* introducing broker-dealers, institutional investors, and retail investors. The margin requirements required by the CCP are a function of the risk posed to the CCP by the potential default of the clearing member. That risk is a function of several factors including the value of trades submitted for clearing but not yet settled, and the volatility of the securities prices that make up those unsettled trades. As these factors are an increasing function of the time to settlement, by reducing settlement from T+2 to T+1, a CCP may require less collateral from its members, and the CCP's members may, in turn, reduce fees that they may pass down to other market participants, including introducing broker-dealers, institutional investors, and retail investors.

Any reduction in clearing broker-dealers' required margin should provide multiple benefits. First, financial resources that are used to mitigate the risks of the clearance and settlement process can be put to alternative uses. Reducing the financial risks associated with the overall clearance and settlement process should reduce the amount of collateral required to mitigate these risks, which should reduce the costs that market participants bear to manage and mitigate these risks, and the allocative inefficiencies that may stem from risk management practices.[564] Second, assets that are valuable because they are particularly suited to meeting financial resource obligations may be better allocated to market participants that hold these assets for their fundamental risk and return characteristics. This improvement in allocative efficiency may improve capital formation.

A portion of the savings from less costly risk management under a T+1 standard settlement cycle relative to a T+2 standard settlement cycle may flow through to investors. Investors may be able to profitably redeploy financial resources that were once needed to fund higher clearing fees, for example.

Market participants might also individually benefit through reduced clearing fund deposit requirements. In 2012, the BCG Study estimated that cost reductions related to reduced clearing fund contributions resulting from moving from a T+3 to a T+2 settlement cycle would amount to $25 million per year.[565] In addition, a shorter settlement cycle might reduce liquidity risk by allowing investors to obtain the proceeds of their securities transactions sooner. Reduced liquidity risk may be a benefit to individual investors, but it may also reduce the volatility of securities markets by reducing liquidity demands in times of adverse market conditions, potentially reducing the correlation between market prices and the risk management practices of market participants.[566]

Shortening the settlement cycle may reduce incentives for investors to trade excessively in times of high volatility.[567] Such incentives exist because investors do not always bear the full cost of settlement risk for their trades. Broker-dealers incur costs in managing settlement risk with CCPs. Broker-dealers can set their fees so that they recover the average cost of risk management from their customers, but those fees depend on a variety of factors that impact settlement risk. If a particular trade has above-average settlement risk, such as when market prices are unusually volatile, broker-dealers may not be able to adjust fees to reflect the higher marginal cost. In extreme cases, broker-dealers may prevent a customer from trading.[568] Shortening the settlement cycle reduces the cost of risk management and should reduce any such incentives to trade more than they otherwise would if they bore the full cost of settlement risk for their trades.

The benefits of harmonized settlement cycles may also accrue to mutual funds. As described above,[569] transactions in mutual fund shares typically settle on a T+1 basis even when transactions in their portfolio securities settle on a T+2 basis. As a result, there is a one-day mismatch between when these funds make payments to shareholders that redeem shares and when the funds receive cash proceeds for portfolio securities they sell. This mismatch represents a source of liquidity risk for mutual funds. Shortening the settlement cycle by one day will mitigate the liquidity risk due to this mismatch. As a result, mutual funds that settle on a T+1 basis may be able to reduce the size of cash reserves or the size of back up credit facilities that some currently use to manage liquidity risk from the mismatch in settlement cycles. Further, mutual funds may be able to invest incoming cash more quickly when funds have net subscriptions, because the settlement time for the purchase of fund shares will be aligned with the settlement time for portfolio investments, thus allowing funds to maximize their exposure to their defined investment strategies.

Adoption of a T+1 standard settlement cycle could also have the second-order, longer-term benefit to U.S. investors of incentivizing other jurisdictions to emulate U.S. markets in adopting a standard settlement time of T+1. By virtue of U.S. capital markets' prominent role in global finance, a transition to a shorter settlement cycle would act as an incentive for other jurisdictions to also compress their settlement times to match U.S. processing times. This would be a product of non-U.S. jurisdictions' desire to reduce transactions costs attendant to settlement mismatches.[570] As a result,

[564] *See supra* Part VIII.B. (further discussing financial resources collected to mitigate and manage financial risks).

[565] *See* The Boston Consulting Group (''BCG''), Cost Benefit Analysis of Shortening the Settlement Cycle, at 10 (Oct. 2012) (''BCG Study''), *https://1library.net/document/ynm3kx1z-cost-benefit-analysis-of-shortening-the-settlement-cycle.html.* According to SIFMA, average daily trading volume in U.S. equities grew from $253.1B in 2011 to $564.7B in 2021, an increase of 123%. See CBOE Exchange, Inc., and SIFMA, US Equities and Related Statistics (Dec. 1, 2022), *https://www.sifma.org/resources/research/us-equity-and-related-securities-statistics/us-equities-and-related-statistics-sifma/.* Price volatility, as measured by the standard deviation of the price, is concave in time, which means that as a period of time increases, volatility will increase, but at a decreasing rate. This suggests that the reduction in price volatility from moving from T+2 settlement to T+1 settlement is larger than the reduction in price volatility from moving from T+3 settlement to T+2 settlement. These two facts suggest that the estimated reduction in clearing fund contributions would be more than $25 million per year.

[566] *See* Peter F. Christoffersen & Francis X. Diebold, *How Relevant is Volatility Forecasting for Financial Risk Management?,* 82 Rev. Econ. & Stat. 12 (2000), *http://www.mitpressjournals.org/doi/abs/10.1162/003465300558597#.V6xeL_nR-JA.* The paper shows that volatility can be predicted in the short run, and concludes that short run forecastable volatility would be useful for risk management practices.

[567] *See* Sam Schulhofer-Wohl, *Externalities in Securities Clearing and Settlement: Should Securities CCPs Clear Trades for Everyone?* (Fed. Res. Bank Chi. Working Paper No. 2021–02, 2021).

[568] This occurred in January 2021 following heightened interest in certain ''meme'' stocks. *See* T+1 Proposing Release, *supra* note 2, at 10438–39.; *see also* Staff Report on Equity and Options Market Structure Conditions in Early 2021, at 31–35 (Oct. 14, 2021), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.*

[569] *See supra* note 563; *see also supra* Part VIII.B.3.

[570] *See, e.g.,* Association for Financial Markets in Europe, T+1 Settlement in Europe: Potential Benefits and Challenges, at 4 (Sept. 2022), stating ''Given that some major jurisdictions will be adopting T+1, the end users of capital markets—companies seeking to issue capital and consumers seeking to invest capital—may benefit from Europe following the same approach. This would also avoid a potential gap in the perceived

Continued

U.S. investors who deploy capital abroad would enjoy the benefits of compressed settlement times that the Commission has already described for the domestic T+1 settlement framework: lower market, credit and liquidity risks; and additional capital efficiencies via lower margin and clearing fund deposit requirements. In addition, a migration to T+1 in other jurisdictions would reduce the settlement mismatch costs described below in Part VIII.C.2.

The Commission believes that these benefits are unlikely to be substantially mitigated by the exceptions to Rule 15c6–1(a) discussed in Part II.A. Market participants that rely on Rule 15c6–1(b) in order to transact in limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association are likely to continue to rely on the exception after the Commission adopts the amendment to Rule 15c6–1(a). Similarly, those that rely on the exemption from Rule 15c6–1 for securities that do not have facilities for transfer or delivery in the U.S. are likely to continue to do so, as indicated by the public comments urging the Commission to retain this exemption.[571] There may be transactions covered by Rule 15c6–1(b) that in the past did not make use of this exception because they settled within two business days, but that may require use of this exception under the amendment to paragraph (a) of the rule because they require more than one business day to settle. However, the Commission did not receive public comments on this point, and does not have data on whether transactions that previously did not make use of the exemption might now do so.

Finally, the extent to which different types of market participants experience any benefits that stem from the amendment to Rule 15c6–1(a) may depend on their market power. As discussed in the proposing release,[572] the clearance and settlement system involves a number of intermediaries that provide a range of services between the ultimate buyer and seller of a security. Those market participants that have a greater ability to negotiate with customers or service providers may be able to retain a larger portion of the operational cost savings from a shorter settlement cycle than others, as they may be able to use their market power to avoid passing along the cost savings to their clients.

Although the Commission proposed deleting Rule15c6–1(c), it is instead, for the reasons discussed above, amending paragraph (c) of Exchange Act Rule 15c6–1 to shorten the settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.[573]

As discussed in the proposing release, paragraph (c) is rarely used in the current T+2 settlement environment, but the IWG expects a T+1 standard settlement cycle would increase reliance on paragraph (c).[574] The Commission is persuaded by comments stating that a T+1 settlement cycle is not sufficiently long enough to prevent firm commitment offerings priced after 4:30 p.m. ET from failing to settle on time, and the Commission acknowledges that paragraphs (a) and (d) of Rule 15c6–1 would not allow parties to agree to a longer settlement cycle when circumstances, unforeseen at the time of the pricing of the transaction, arise that prevent settlement on T+1. The Commission further acknowledges that, while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date, they must reach that agreement at the time of the transaction.

The Commission believes that amending Rule 15c6–1(c) as discussed in Part II.C.4 above will realize the benefits of shortening the settlement cycle discussed above for the specific transactions covered by paragraph (c) while allowing an extra day to resolve issues unanticipated at the time of the transaction. According to one commenter, it is not unusual for unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties to arise.[575] Such unanticipated issues could lead to increased failures to settle trades on a T+1 basis with respect to firm commitment offerings.

In addition to the amendments to Rule 15c6–1(a) and (c), the Commission is adopting three rules applicable, respectively, to broker-dealers, investment advisers, and CMSPs to improve the efficiency of managing the processing of institutional trades under the shortened timeframes that will be available in a T+1 environment. First, the Commission had proposed new Rule 15c6–2 to require that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker or dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer, unless such broker or dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[576] The Commission is adopting a modified new Rule 15c6–2 that, in addition to technical changes,[577] and for the reasons discussed in Part III.C.2 above, modifies the proposed rule by adding a new paragraph (a), under which a broker-dealer can determine either to enter into written agreements, or establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable, and no later than the end of the day on trade date, in such form as necessary to achieve settlement.

The Commission believes that implementing a T+1 standard settlement cycle, as well as any potential further shortening beyond T+1, will necessitate increases in same-day affirmation rates because same-day affirmations will be critical to achieving timely T+1 settlement.[578] In this way, the Commission also believes that new Rule 15c6–2 should facilitate timely settlement as a general matter because it will accelerate the transmission and affirmation of trade data to trade date, improving the accuracy and efficiency of institutional trade processing, and reducing the potential for settlement failures. The Commission further anticipates that proposed Rule 15c6–2 will likely stimulate further development of automated and standardized practices among market

competitiveness of European markets vis-à-vis its global peers.''

[571] *See* discussion in sections II.B.5 and II.C.6.

[572] *See* T+1 Proposing Release, *supra* note 2, at 10439–44.

[573] *See* T+1 Proposing Release, *supra* note 2, at 10449–50.

[574] T+1 Report, *supra* note 61, at 33–35.

[575] *See supra* Part II.B.3. for detailed description of comment letters urging the Commission to adopt a T+2 settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.

[576] *See* T+1 Proposing Release, *supra* note 2, at 10453; *see also supra* Part III.A.

[577] *See supra* Part III.C.1.

[578] *See supra* note 262.

participants more generally, particularly those that currently rely on manual processes to achieve settlement.

Although same-day affirmation is considered a best practice for institutional trade processing, this practice is not universal across market participants or even across all trades entered by a given participant.[579] As discussed in Part VIII.B above, the collection of redundant, often manual steps and the use of uncoordinated (*i.e.,* not standardized) databases can lead to delays, exceptions processing, settlement fails, wasted resources, and economic losses. The Commission believes that proposed Rule 15c6–2 should increase the percentage of trades that achieve an affirmed confirmation on trade date and should help facilitate an orderly transition to T+1. Proposed Rule 15c6–2 would also improve the efficiency of the settlement cycle by incentivizing market participants to commit to operational and technological upgrades that facilitate same-day affirmation to eliminate, among other things, manual operations, while also reducing operational risk, discouraging the use of ''just in time'' solutions, and promoting readiness for shortening the settlement cycle.[580]

Second, the Commission is amending the recordkeeping obligations of investment advisers to ensure that they are properly documenting their related allocations and affirmations, as well as the confirmations they receive from their broker-dealers.[581] The amendment to Rule 204–2 requires advisers to time and date stamp records of any allocation and each affirmation with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). The Commission believes that the timing of communicating allocations to the broker or dealer is a critical pre-requisite to help ensure that confirmations can be issued in a timely manner, and affirmation is the final step necessary for an adviser to acknowledge agreement on the terms of the trade or alert the broker or dealer of a discrepancy. The Commission believes the recordkeeping requirements should help establish that obligations to achieve a matched trade have been met. Requiring the retention of these records also is important for the Commission staff's use in its regulatory and examination program and will be helpful for the Commission to monitor the transition from T+2 to T+1. Moreover, the amendments to Rule 204–2 are intended to reduce risk following the transition to T+1 by improving affirmation rates.

Finally, the Commission is adopting a requirement for CMSPs to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing.[582] Under the rule, a CMSP facilitates straight-through processing when its policies and procedures enable its users to minimize, to the greatest extent that is technologically practicable, the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of the trade.[583]

The Commission believes that increasing the usage of CMSPs can reduce costs and risks associated with processing institutional trades and improve the efficiency of the national clearance and settlement system.[584] CMSPs have become increasingly connected to a wide variety of market participants in the U.S. and elsewhere,[585] increasing the need to reduce risks and inefficiencies that may result from use of a CMSPs' systems. The Commission believes the new rule will better position CMSPs to provide services that not only reduce the risk inherent in manual processing, but also help facilitate an orderly transition to a T+1 standard settlement cycle, as well as potential further shortening of the settlement cycle in the future.[586] The new requirement supports some of the benefits derived from a shortening of the settlement cycle, and mitigates any subsequent potential increase in fails that may be caused by the reduced time to remediate any errors in trades.

New Rule 17Ad–27 also requires a CMSP to submit every twelve months to the Commission a report that describes the following: (i) a summary of the CMSP's current policies and procedures for facilitating straight-through processing;[587] (ii) a qualitative description of its progress in facilitating straight-through processing during the twelve month period covered by the report;[588] (iii) a quantitative presentation of data that includes six specified sets of data;[589] (iv) requirements concerning quantitative data organization and categorization;[590] and (v) the steps the CMSP intends to take to facilitate and promote straight-through processing during the twelve month period that follows the period covered by the report.[591] The new requirement also informs the Commission and the public, particularly the direct and indirect users of the CMSP, as to the progress being made each year to advance implementation of straight-through processing with respect to the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing.

New Rule 17Ad–27 requires the CMSP to file the report on EDGAR using Inline XBRL, a structured (machine-readable) data language.[592] The Commission does not currently require CMSPs to provide the specific disclosures set forth in Rule 17Ad–27, but CMSPs may provide disclosures

[579] *See supra* Part III.B.1. for a discussion of comments that argue that commercial incentives to achieve timely trade allocations, confirmations, and affirmations already exist. Although the Commission agrees that the incentives identified by commenters exist and help ensure timely settlement, the Commission believes that these incentives alone are insufficient to significantly improve same-day affirmation rates, as required to facilitate shortening the standard settlement cycle to T+1.

[580] *See* discussion in section III.B.5. and *supra* note 294 and accompanying text.

[581] *See supra* Part IV.C.

[582] *See supra* Part V.C.; *see also* T+1 Proposing Release, *supra* note 2, at 10458 (further discussing the term ''straight-through processing'').

[583] *See* T+1 Proposing Release, *supra* note 2, at 10458.

[584] *See supra* note 539 and accompanying discussion of processing errors.

[585] *See* DTCC, *About DTCC Institutional Trade Processing, https://www.dtcc.com/about/businesses-and-subsidiaries/dtccitp* (noting that DTCC ITP, parent to DTCC ITP Matching, serves 6,000 financial services firms in 52 countries).

[586] *See supra* Part V.C. for related discussion.

[587] *See supra* Part V.C.2.(a).

[588] *See supra* Part V.C.2.(b).

[589] *See supra* Part V.C.2.(c). Specifically, Rule 17Ad–27(b)(3) requires the CMSP to provide data that includes (i) the total number of trades submitted to the clearing agency for processing; (ii) the total number of allocations submitted to the clearing agency; (iii) the total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by a user; (iv) the percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the time of affirmation on trade date; (v) the percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and (vi) metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that may be used to assess progress in facilitating STP.

[590] *See supra* Part V.C.2.(d). Specifically, Rule 17Ad–27(b)(4) requires the CMSP to submit, pursuant to paragraph (b)(4), the data sets required under paragraph (b)(3) of the new rule and which must be: (i) organized on a month-by-month basis beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of the rule; (ii) separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency; (iii) separated, as appropriate, by asset class; (iv) separated by type of user; and (v) presented on an anonymized and aggregated basis.

[591] *See supra* Part V.C.2.(e).

[592] *See supra* Part V.C.4.

related to straight-through processing as part of Exhibit J or Exhibit S to their exemption applications (or updates thereto) on Form CA–1.[593] These disclosures are not centrally filed on an electronic database, nor are they machine-readable; instead, clearing agencies are required to mail four completed copies of Form CA–1 to the Commission's headquarters.[594]

Requiring a centralized filing in EDGAR using location and a machine-readable data language for the reports facilitates access, retrieval, analysis, and comparison of the disclosed straight-through processing information across different CMSPs and time periods by the Commission and the public, thus potentially augmenting the informational benefits of the report requirement.

2. Costs

The Commission believes that compliance with a T+1 standard settlement cycle will involve initial fixed costs to update systems and processes.[595] The Commission does not have all of the data necessary to form its own firm-level estimates of the costs of updates to systems and processes, as the types of data needed to form these estimates are difficult or impossible for the Commission to collect. However, the Commission has used inputs provided by industry studies discussed in this release to quantify these costs to the extent possible in Part VIII.C.5. In the proposing release, the Commission encouraged commenters to provide any additional or more current information or data on the costs to market participants of the proposed rule. Information received in public comments has informed this analysis.

The operational cost burdens associated with the amendment to Rule 15c6–1(a) for different market participants may vary depending on each market participant's degree of direct or indirect inter-connectivity to the clearance and settlement process, regardless of size. For example, market participants that internally manage more of their own post-trade processes directly incur more of the upfront operational costs associated with the amendment to Rule 15c6–1(a), because they are required to directly undertake more of the upgrades and testing necessary for a T+1 standard settlement cycle. As mentioned in Part II.B of the proposing release, other market participants might outsource the clearance and settlement of their transactions to third-party providers of back-office services. The exposures to the operational costs associated with shortening the standard settlement cycle should be indirect to the extent that third-party service providers pass through the costs of infrastructure upgrades to their customers. The degree to which customers bear operational costs depends on their bargaining position relative to third-party providers. Large customers with market power may be able to avoid internalizing these costs, while small customers in a weaker negotiation position relative to service providers may bear the bulk of these costs. In either case, to the extent that the costs of infrastructure upgrades are fixed, the distribution of the cost burden across many customers of the third-party service provider implies that the costs to each individual customer is likely to be less than if they did not outsource the clearance and settlement of their transactions.

Further, changes to initial and ongoing operational costs may make some self-clearing market participants alter their decision to continue internally managing the clearance and settlement of their transactions. Entities that currently internally manage their clearance and settlement activity may prefer to restructure their businesses to rely instead on third-party providers of clearance and settlement services that may be able to amortize the initial fixed cost of upgrade across a much larger volume of transaction activity.

In addition, the shortening of the settlement cycle may increase the need for some market participants engaging in cross-border and cross-asset transactions to hedge risks stemming from mismatched settlement cycles and differences in time zones, resulting in additional costs. For example, as discussed in Part II.B.1 above, a comment letter submitted by an industry association representing the alternative investment industry stated that the T+1 Proposing Release ''raises considerable risks for asset managers with primary or significant exposure to markets that will remain at T+2.'' [596] The commenter's letter references specifically ''misalignment concerns'' relating to FX settlement risk, international banking and coordination issues, and collateral/liquidity risk.[597]

One commenter stated that because FX transactions largely settle on a T+2 basis, market participants that seek to fund a cross-border securities transaction with the proceeds of an FX transaction would be required to settle the securities transaction before the proceeds of the FX transaction become available and pre-fund these securities transactions, which would potentially adversely impact client performance and increase operating and settlement risk for advisers.[598] The commenter said that, while both domestic and internationally based investment advisers would be impacted by these issues, non-U.S.-based investment advisers would face additional expenses because they would need to set up an FX trading and settlement presence in the U.S., or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[599] Although there currently exists misalignment of settlement cycles across asset classes and as a result of time zone differences, the Commission agrees that misalignment introduced by the rule amendment being adopted will likely present some challenges for, and increase costs for, certain market participants, including asset managers.[600] For example, as discussed in the proposing release, under the T+1 settlement cycle, a market participant selling a security in European equity markets to fund a purchase of securities

[593] In the past, applicants have discussed on the Form CA–1 application how their services might relate to the overall objective of straight-through processing. *See, e.g.,* Bloomberg STP LLC Form CA–1 (Jan. 21, 2015), *https://www.sec.gov/rules/other/2015/34-74394-form-ca-1.pdf*. Exhibit J to Form CA–1 requires clearing agencies to provide narrative descriptions of each service or function performed by the registrant. Exhibit S to Form CA–1 requires a statement demonstrating why the granting of an exemption from registration as a clearing agency would be consistent with the public interest, the protection of investors and the purposes of section 17A of the Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

[594] *See* Instruction I.2. to Form CA–1.

[595] Industry sources have suggested some updates to systems and processes might yield operational cost savings after the initial update. For example, the T+1 Report stated that ''[w]hile there may be . . . up-front implementation costs to transition the industry to T+1, the industry foresees long-term cost reduction for market participants, and by extension, costs borne by end investors, given the benefits of moving to T+1 settlement.'' T+1 Report, *supra* note 61, at 9; *see infra* Part VIII.C.5.(a). for industry estimates of the costs and benefits of the proposed amendment to Rule 15c6–1(a).

[596] *See supra* note 31.

[597] *See supra* note 34.

[598] IAA October Letter, *supra* note 222, at 4. The commenter also suggested certain actions the Commission could take to reduce disruption in FX markets. *See supra* note 41.

[599] IAA October Letter, *supra* note 222, at 4 (suggesting certain actions the Commission could take to reduce disruption in FX markets, such as by (i) working with other regulators and market participants to support the move to T+1 by, among other things, modifying the FX and equity trading day(s) in the U.S., and (ii) ''allow[ing] for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without it breaching an investment adviser's best execution obligation'').

[600] *See* Part II.C.1. (discussing challenges and costs associated with the misalignment of securities and FX settlement cycles).

in U.S. markets would face a one day lag between settlement in Europe and settlement in the U.S. The market participant could choose between bearing an additional day of market risk in the U.S. trading markets by delaying the purchase by a day, or funding the purchase of U.S. shares with short-term borrowing. Additionally, because the FX market has a T+2 settlement cycle,[601] the market participant will also be faced with a choice between bearing an additional day of currency risk due to the need to sell foreign currency as part of the transaction, or incurring the cost related to hedging away this risk in the forward or futures market.

Another commenter stated that if the U.S. settlement cycle is shortened to T+1 while other major global financial centers remain on a T+2 settlement cycle, ''there will be increased operational cost and significant settlement risks associated with multi-leg cross border transactions.'' [602] This commenter further stated that it expects mismatched settlement cycles would result in increased financing costs associated with transactions in which a U.S. market participant is selling to a cross-border participant because ''we will be forced to receive (and pay for) a securities position on T+1 for the U.S. leg, but generally be unable to onward deliver the position on the foreign leg until T+2.'' [603] This commenter also stated its expectation that mismatched settlement cycles will result in a significant number of settlement fails, that the increase in financing costs and settlement fails in connection with cross-border transactions may force broker-dealers to decrease or cease offering cross-border services to their clients, that any decrease or cessation of cross-border trading ultimately will reduce liquidity for U.S. investors.[604]

Another commenter stated that the shortened settlement cycle in conjunction with time zone differences between markets may not allow sufficient time for investment advisers to match foreign currency amount to settle all trades on T+1.[605] In the context of discussing potential exemptions to 15c6–1, another commenter stated that settling trades with different time zones is already a difficult process and accelerating the settlement cycle for these securities would make cross-border transactions even more challenging.[606]

Commenters also stated that the misalignment of settlement cycles between U.S. securities and non-U.S. securities will impact U.S. securities that are exchangeable for a foreign security or a basket including foreign securities.[607] The commenter highlighted in particular ADRs, and ETFs with an underlying basket that includes foreign securities, which according to the commenter, illustrate this misalignment.[608] The commenter stated that market makers and other market participants may purchase foreign shares and sell related ADRs in the U.S. on the same trading day, and thus timely settle the sale of the ADRs using the newly created ADRs.[609] According to the commenter, this type of trade will not be possible if the underlying foreign shares settle on T+2 and the related ADR is required to settle on T+1.[610] The result, the commenter stated, is likely to be wider bid-ask spreads for the ADR because market makers must take into account the additional cost of borrowing securities and other financing costs to avoid settlement failures.[611] Additionally, the commenter argued, the incidence of fails would likely increase as a result of the misaligned settlement cycles, particularly where it is not possible to borrow securities to make delivery, and a knock-on effect could be to increase the incidence of buy-ins as well.[612]

Separately, the same commenter argued that the ETF creation/redemption process is impacted by the misalignment of global securities transaction settlement cycles where the basket of securities underlying an ETF includes foreign securities.[613] A second commenter stated that the misalignment in settlement cycles between the U.S. and foreign jurisdictions that continue to settle on a T+2 basis, coupled with time zone differences, may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches.[614] The same commenter stated that due to the resulting misalignment in settlement cycles between the U.S. and foreign markets upon transitioning to T+1, an ADR provider may incur borrowing and other costs related to the underlying foreign security to facilitate T+1 settlement of the ADR.[615] According to the commenter, these costs would likely be passed down to investors and thus make it more expensive to obtain investment exposure to foreign markets.[616]

The Commission understands that variation in the length of the settlement cycle across asset classes and jurisdictions and variation in time zone introduce certain risks and costs on investors, broker-dealers, custodians, and other market participants,[617] but the Commission notes that currently and in the recent past settlement cycles have varied across asset classes and jurisdictions. The Commission further understands that the financial services industry has managed the challenges provided by these settlement cycle mismatches and time zone differences between markets albeit at some cost.[618] Our information on these costs is limited regarding how firms will overcome the specific challenges identified by certain commenters. If other jurisdictions subsequently follow the U.S. in shortening the settlement cycle, however, many of the additional costs will only be incurred during that interval.[619] In addition, the Commission understands that solutions to specific challenges may still need to be worked out by the affected industry participants and that those solutions may require additional costs to overcome.

The way that different market participants will likely bear costs as a result of the amendment to Rule 15c6–1(a) may also vary based on their business structure. For example, a shorter standard settlement cycle will require payment for securities that settle regular-way by T+1 rather than T+2.

[601] *See, e.g.,* CME, CME Rulebook Chapter 13, at 3, *https://www.cmegroup.com/content/dam/cmegroup/rulebook/CME/I/13.pdf* (''Spot FX Transaction means a currency purchase and sale that is bilaterally settled by the counterparties via an actual delivery of the relevant currencies within two Business Days.''). U.S. and Canadian dollar spot FX transactions settle on the next business day. *Id.* at 5–6.

[602] *See supra* note 43.

[603] *Id.*

[604] *Id.*

[605] *See supra* note 50. This commenter also suggested certain ''options'' for actions that could be taken to reduce disruption in the FX markets. *See supra* Part II for a discussion of these options.

[606] *See supra* note 107.

[607] *See* SIFMA April Letter, *supra* note 15, at 8.

[608] *See id.*

[609] *See* SIFMA April Letter, *supra* note 16, at 8.

[610] *See id.*

[611] *See id.*

[612] *See id.*

[613] *See id.* and referencing text for a discussion of settlement cycle misalignment on the create and redeem process for ETFs that include securities not traded in the U.S.

[614] *See supra* note 122.

[615] *See id.*

[616] *See id.*

[617] *See supra* Part II.C.1. for a discussion of the Commission's recognition of the challenges and costs associated with the prospective misalignment of settlement cycles, the Commission actions suggested by commenters, and examples of actions market participants may take in order to mitigate those challenges and costs.

[618] For example, during periods of heightened uncertainty it is common for some investors to sell equities, including foreign equities, and invest in U.S. Treasury securities (which generally settle on T+1). Such a trade would include many of the issues cited by commenters including differences in time zones, currency, and settlement cycle.

[619] *See supra* Part VIII.C.1.

Generally, regardless of current funding arrangements between investors and broker-dealers, removing one business day between execution and settlement will mean that broker-dealers could choose between requiring investors to fund the purchase of securities one business day earlier, while extending the same level of credit they do under T+2 settlement, or providing an additional business day of funding to investors.[620] In other words, broker-dealers could pass through some of the costs of a shorter standard settlement cycle by imposing the same shorter cycle on investors, or they could pass these costs on to investors by raising transactions fees to compensate for the additional business day of funding the broker-dealer may choose to provide. The extent to which these costs get passed through to customers may depend on, among other things, the market power of the broker-dealer. Generally, if a broker-dealer does not face significant competition, it will have an incentive to absorb part of the cost increase. On the other hand, in the extreme case of a perfectly competitive market, there are no economic profits and price equals marginal costs so an increase in cost could be fully passed through to the customer.[621]

However, broker-dealers that predominantly serve retail investors may experience the costs of an earlier payment requirement differently from broker-dealers with more institutional clients or large custodian banks because of the way retail investors fund their accounts. Retail investors may find it difficult to accelerate payments associated with their transactions, which may cause broker-dealers, who are unwilling to extend additional credit to retail investors, to instead require that these investors pre-fund their transactions.[622] These broker-dealers may also experience costs unrelated to funding choices. For instance, retail investors may require additional or different services such as education regarding the impact of the shorter standard settlement cycle.

Finally, a shorter settlement cycle may result in higher costs associated with liquidating a defaulting member's position, as a shorter horizon may result in larger price impacts, particularly for less liquid assets. For example, when a clearing member defaults, NSCC is obligated to fulfill its trade guarantee with the defaulting member's counterparty. One way it accomplishes this is by liquidating assets from clearing fund contributions from clearing members. However, liquidating assets in shorter periods of time can have larger adverse impacts on the prices of the assets. Shortening the standard settlement cycle from two business days to one business day could reduce the amount of time that NSCC has to liquidate its assets, which may exacerbate the price impact of liquidation.

As discussed above, the Commission is amending the recordkeeping obligations of investment advisers with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a) to require advisers to make and keep records of their related allocations and affirmations sent or received, as well as the confirmations they receive.[623] The amendment to Rule 204–2 requires advisers to time and date stamp records of any such allocation and affirmation. The Commission recognizes, however, that requiring these records, and adding time and date stamps to records, will add additional costs and burdens for those advisers that do not currently make and keep these records, or do not use electronic systems to send allocations and affirmations to brokers or dealers, or retain confirmations.[624] For example, some advisers may incur costs to update their processes to accommodate these records.

3. Economic Implications Through Other Commission Rules

As noted in Part III.E of the T+1 proposing release, the amendment to Rule 15c6–1(a), by shortening the standard settlement cycle, could have an ancillary impact on the means by which market participants comply with existing regulatory obligations that relate to the settlement timeframe. The Commission also provided illustrative examples of specific Commission rules that include such requirements or are otherwise reference the settlement date, including Regulation SHO,[625] and certain provisions included in the Commission's financial responsibility rules.[626] The Commission invited and received public comment on these effects, and these comments are discussed in detail in Part VI. Those public comments inform this analysis, but did not provide information the Commission could use to quantify the ancillary economic impact the amendments and new rules might have on how market participants comply with other Commission rules.

Financial markets and regulatory requirements have evolved significantly since the Commission adopted Rule 15c6–1 in 1993. Market participants have responded to these developments in diverse ways, including implementing a variety of systems and processes, some of which may be unique to specific market participants and their businesses, and some of which may be integrated throughout business operations of certain market participants. Because of the broad variety of ways in which, depending on their particular circumstances, market participants currently satisfy regulatory obligations pursuant to Commission rules, it is difficult to identify particular practices that may be specific to a single or group of market participants will need to change in order to meet these other obligations. In this case, the Commission is unable to quantify the ancillary economic impact that the amendment to Rule 15c6–1(a) will have on how market participants comply with other Commission rules. As above, the Commission invited commenters to provide quantitative and qualitative information about these potential economic effects. These comments are discussed in in detail in Part VI above and inform this analysis.

In certain cases, based on information about current market practices, the Commission believes that the

[620] The direct cost of such a delay would be the one-day borrowing cost of the market intermediary providing the extra day of financing or the opportunity cost of funds to the investor times the value of the transaction. Such funding and opportunity costs will vary across investors, intermediaries, and time.

[621] More specifically, the market clearing quantity of the good or service supplied will adjust and the extent of industry-wide cost pass-through in a perfectly competitive market depends on the elasticity of demand relative to supply. The more elastic is demand, and the less elastic is supply, the smaller the extent of pass-through, all else being equal. *See* RBB Economics, Cost Pass-through: Theory, Measurement and Potential Policy Implications, A Report Prepared for the Office of Fair Trading, at 4 (Feb. 2014) *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf*.

[622] *See infra* Part VIII.C.5.(b)(3) for additional discussion regarding retail investors and their broker-dealers.

[623] *See supra* Part IV.C.

[624] A commenter sought clarification regarding an adviser's ability to rely on third parties to meet its recordkeeping obligations for allocations, confirmations, and affirmations. *See supra* note 304 and accompanying text. As discussed above in Part IV.C., the Commission is confirming that an adviser may rely on a third party to make and keep the required records, although using a third party to make and keep records does not reduce an adviser's obligations under Rule 204–2.

[625] 17 CFR 242.200 through 242.204.

[626] *See* T+1 Proposing Release, *supra* note 2, at 10462–63; *see also supra* Parts VI.A. and VI.C. (discussing comments received). The Commission also solicited comment on the impact of shortening the settlement cycle on compliance with Rule 10b–10 under the Exchange Act and broker-dealer obligations with regard to prospectus delivery. *See* T+1 Proposing Release, *supra* note 2, at 10463–64; *see also supra* Parts VI.B. and VI.C. (discussing comments received).

amendment to Rule 15c6–1(a) will be unlikely to change the means by which market participants comply with existing regulatory requirements. In these cases, the Commission believes that market participants will not incur significant increased costs of compliance from such regulatory requirements from shortening the settlement cycle to T+1.

In other cases, however, the amendment may incrementally increase the costs associated with complying with other Commission rules, where such rules potentially require broker-dealers to engage in purchases of securities. Two examples of these types of rules are Regulation SHO and the Commission's financial responsibility rules. In most instances, Regulation SHO governs the timeframe in which a ''participant'' of a registered clearing agency must close out a fail to deliver position by purchasing or borrowing securities.[627] Similarly, some of the Commission's financial responsibility rules relate to actions or notifications that reference the settlement date of a transaction. For example, Exchange Act Rule 15c3–3(m)[628] uses the settlement date to prescribe the timeframe in which a broker-dealer must complete certain sell orders on behalf of customers. As noted above, the term ''settlement date'' is also incorporated into paragraph (c)(9) of Rule 15c3–1,[629] which explains what it means to ''promptly transmit'' funds and ''promptly deliver'' securities within the meaning of paragraphs (a)(2)(i) and (a)(2)(v) of Rule 15c3–1. As explained above, the concepts of promptly transmitting funds and promptly delivering securities are incorporated in other provisions of the financial responsibility rules.[630] Under the amendment to Rule 15c6–1(a), the timeframes included in these rules will be one business day closer to the trade date.

The Commission believes that shortening these timeframes should not materially affect the costs that broker-dealers incur to meet their Regulation SHO obligations and obligations under the Commission's financial responsibility rules.[631] Nevertheless, the Commission acknowledges that a shorter settlement cycle could affect the processes by which broker-dealers manage the likelihood of incurring these obligations. For example, broker-dealers may currently have in place inventory management systems that help them avoid failing to deliver securities by T+2. Broker-dealers will likely incur costs in order to update these systems to support a shorter settlement cycle.

In cases where market participants will need to adjust the way in which they comply with other Commission rules, the magnitude of the costs associated with these adjustments is difficult to quantify. As noted above, market participants employ a wide variety of strategies to meet regulatory obligations. For example, broker-dealers may ensure that they have securities available to meet their obligations by using inventory management systems, or they may choose instead to borrow securities. An estimate of costs is further complicated by the possibility that market participants could change their compliance strategies in response to a shorter standard settlement cycle.

As with the T+2 transition, the Commission anticipates that the transition to T+1 will again require changes to SRO rules and changes to the operations or market participants subject to those rules to achieve consistency with a T+1 standard settlement cycle. Certain SRO rules reference existing Rule 15c6–1 or currently define ''regular way'' settlement as occurring on T+2 and, as such, may need to be amended in connection with shortening the standard settlement cycle to T+1. Certain timeframes or deadlines in SRO rules also may refer to the settlement date, either expressly or indirectly. In such cases, the SROs may need to amend these rules in connection with shortening the settlement cycle to T+1.[632]

The Commission invited commenters to provide quantitative and qualitative information about the impact of the amendment to Rule 15c6–1(a) on the costs associated with compliance with other Commission rules. Although several commenters raised issues related to SRO rules and operations,[633] no commenters provided quantitative information about the impact of the rules and rule amendments being adopted on the costs associated with compliance with other Commission rules or SRO rules.

4. *Effect on Efficiency, Competition, and Capital Formation*

In response to the T+1 Proposing Release, the Commission received numerous comment letters supporting a shorter settlement cycle for securities transactions citing positive effects of the proposed rule on efficiency, competition, and capital formation. One commenter stated that the Commission's proposal to shorten the settlement cycle is an example of an initiative aimed at introducing more efficiency to the marketplace while reducing risks for investors and other market participants.[634] Another commenter noted that shortening the current settlement cycle would improve capital and operational efficiencies.[635] Another commenter cited benefits of the proposed rule including enhanced efficiency of the equity markets and better use of capital.[636] Another commenters stated that the proposed rule may improve capital efficiency and may increase competition.[637] A commenter also noted that the ''reasonably designed'' standard for policies and procedures fosters innovation and encourages competition by enabling each registrant to adopt compliance methodologies aligned to its role and capabilities.[638] While discussing changes necessary to implement a shorter settlement cycle, a commenter noted that the settlement process would be modernized to remove dependencies on manual processes and facilitate straight-through processing utilizing technology to achieve a more robust process which would reduce risks and remove impediments to an efficient settlement process.[639]

Market participants may incur initial costs for the investments necessary to comply with a shorter standard settlement cycle.[640] However, these

[627] *See* T+1 Proposing Release, *supra* note 2, at 10461–62.

[628] 17 CFR 240.15c3–3(m).

[629] 17 CFR 240.15c3–1(c)(9).

[630] *See, e.g.,* 17 CFR 240.15c3–1(a)(2)(i) and (v); 17 CFR 240.15c3–3(k)(1)(iii) and (k)(2)(i) and (ii); 17 CFR 240.17a–5(e)(1)(i)(A); 17 CFR 240.17a–13(a)(3).

[631] *See supra* Parts VI.A. (Regulation SHO) and VI.C. (Financial Responsibility Rules for Broker-Dealers) for a discussion of commenters concerns and the reasons why the Commission believes that costs should not be materially affected.

[632] The T+1 Report similarly indicates that SROs will likely need to update their rules to facilitate a transition to a T+1 standard settlement cycle. T+1 Report, *supra* note 61, at 35.

[633] *See supra* Part VI.E.

[634] *See* Virtu Financial Letter, *supra* note 16, at 5.

[635] *See* Cornell Law Letter, *supra* note 16, at 3; *see also* RMA Letter, *supra* note 16, at 3, stating that ''We further agree that acceleration of the standard settlement cycle to T+1 could increase the efficiency of capital market transactions and reduce systemic risk.'' *See also* NYSE Group Letter, *supra* note 16, at 1, stating that ''A T+1 settlement cycle will significantly increase market efficiency, mitigate risk (particularly during times of extreme volatility and stressed markets) and free up liquidity—cash or shares—held to ensure the completion of trades. This will allow industry participants to take advantage of capital and operational efficiencies, and benefit from significant risk reduction and a potential lowering of margin requirements.''

[636] *See* MMI Letter, *supra* note 16, at 2.

[637] *See* Wilson-Davis Letter, *supra* note 16, at 5–6.

[638] *See* OCC Letter, *supra* note 16, at 3.

[639] *See* Jeffrey S. Davis, Senior Vice President, Senior Deputy General Counsel, Nasdaq (April 11, 2022) (''Nasdaq Letter''), at 2.

[640] *See supra* Part VIII.C.2.

costs are likely to differ across market participants, and these differences may exacerbate coordination problems. First, per-transaction operational costs clearing members incur in connection with the clearing services they provide may be higher for members that clear fewer transactions than such costs are for members that clear a higher volume of transactions. Thus, the extent to which many of the upgrades necessary for a T+1 standard settlement cycle are optimal for a member to adopt unilaterally may depend, in part, on the transaction volume cleared by such member. For example, certain upgrades necessary for a T+1 standard settlement cycle may result in economies of scale, where large clearing members are able to comply with the amendment to Rule 15c6–1(a) at a lower per-transaction cost than smaller members. As a result, larger members might take a short time to recover their initial costs for upgrades; smaller members with lower transaction volumes might take longer to recover their initial cost outlays and might be more reluctant to make the upgrades in the absence of the amendment. These differences in cost per transaction may be mitigated through the use of third-party service providers.

In addition, the Commission acknowledges that the upgrades necessary to implement a shorter standard settlement cycle may produce indirect economic effects. We analyze some of these indirect effects, such as the impact on competition and third-party service providers, in the following section.

A shorter settlement cycle might improve the efficiency of the clearance and settlement process through several channels. First, the Commission believes that the primary effect that a shorter settlement cycle will have on the efficiency of the settlement process will be a reduction in the credit, market, and liquidity risks that broker-dealers, CCPs, and other market participants are subject to during the standard settlement cycle.[641] A shorter standard settlement cycle will generally reduce the volume of unsettled transactions that could potentially pose settlement risk to counterparties. Shortening the period between trade execution and settlement should enable trades to be settled with less aggregate risk to counterparties or the CCP. A shorter standard settlement cycle may also decrease liquidity risk by enabling market participants to access the proceeds of their transactions sooner, which may reduce the cost market participants incur to handle idiosyncratic liquidity shocks (*i.e.,* liquidity shocks that are uncorrelated with the market). That is, because the time interval between a purchase/sale of securities and payment is reduced by one business day, market participants with immediate payment obligations that they could cover by selling securities will be required to obtain short-term funding for one less day.[642] As a result of reduced cost associated with covering their liquidity needs, market participants may, under particular circumstances, be able to shift assets that would otherwise be held as liquid collateral towards more productive uses, improving allocative efficiency.[643]

Second, a shorter standard settlement cycle may increase price efficiency through its effect on credit risk exposures between financial intermediaries and their customers. In particular, a prior study noted that certain intermediaries that transact on behalf of investors, such as broker-dealers, may be exposed to the risk that their customers default on payment obligations when the price of purchased securities declines during the settlement cycle.[644] As a result of the option to default on payment obligations, customers' payoffs from securities purchases resemble European call options and, from a theoretical standpoint, can be valued as such. Notably, the value of European call options increases in the time to expiration [645] suggesting that the value of call options held by customers who purchase securities is increasing in the length of the settlement cycle. In order to compensate itself for the call option that it writes, an intermediary may include the cost of these call options as part of its transaction fee and this cost may become a component of bid-ask spreads for securities transactions. By reducing the value of customers' option to default by reducing the option's time to maturity, a shorter standard settlement cycle may reduce transaction costs in U.S. securities markets. In addition, to the extent that any benefit buyers receive from deferring payment during the settlement cycle is incorporated in securities returns, [646] the amendment to Rule 15c6–1(a) may reduce the extent to which such returns deviate from returns consistent with changes in fundamentals.

As discussed in more detail in Part VIII.C.2 above, the Commission believes that the amendment to Rule 15c6–1(a) will likely require market participants to incur costs related to infrastructure upgrades, and will likely yield benefits to market participants, largely in the form of reduced operational and financial risks related to settlement. As a result, the Commission believes that the amendment to Rule 15c6–1(a) could affect competition in a number of different, and potentially offsetting, ways.

The prospective reduction in financial risks related to shortening the standard settlement cycle may represent a reduction in barriers to entry for certain market participants.[647] Reductions in the financial resources required to cover an NSCC member's clearing fund requirements that result from a shorter standard settlement cycle could encourage financial firms that currently clear transactions through NSCC clearing members to become clearing members themselves.

Their entry into the market could promote competition among NSCC clearing members. Furthermore, if a reduction in settlement risks results in lower transaction costs for the reasons discussed above, market participants that were, on the margin, discouraged from supplying liquidity to securities markets due to these costs, could choose to enter the market for liquidity suppliers, increasing competition.

At the same time, the Commission acknowledges that the process improvements required to enable a shorter standard settlement cycle could adversely affect competition. Among clearing members, where such process improvements might be necessary to comply with the shorter standard settlement cycle required under the amendment to Rule 15c6–1(a), the cost associated with compliance might increase barriers to entry, because new firms will incur higher fixed costs associated with a shorter standard settlement cycle if they wish to enter the market. Clearing members might choose to comply by upgrading their systems and processes or may choose instead to exit the market for clearing services. The exit of clearing members could have negative consequences for competition

[641] Reduction of these risks should result in the reduction of margin requirements and other risk management activity that requires resources that could be put to another use.

[642] *See supra* Part VIII.B.2.

[643] *See supra* Part VIII.A.

[644] *See* Madhavan et al., *supra* note 508.

[645] All other things equal, an option with a longer time to maturity is more likely to be in the money given that the variance of the underlying security's price at the exercise date is higher.

[646] *See supra* Part VIII.B.2.

[647] *See supra* Part VIII.C.1. for a discussion of the reduction in credit, market, and liquidity risks to which NSCC would be subject as a result of a shortening of the settlement cycle and the subsequent reduction financial resources dedicated to mitigating those risks.

among clearing members. Clearing activity tends to be concentrated among larger broker-dealers.[648] Clearing member exit could result in further concentration and additional market power for those clearing members that remain.

Alternatively, some current clearing members may choose to comply in part by outsourcing their operational needs to third-party service providers. Use of third-party service providers may represent a reasonable response to the operational costs associated with the amendment to Rule 15c6–1(a). To the extent that third-party service providers are able to spread the fixed costs of compliance across a larger volume of transactions than their clients, the Commission believes that the use of third-party service providers might impose a smaller compliance cost on clearing members than if these firms directly bore the costs of compliance. The Commission believes that this impact may stretch beyond just clearing members. The use of third-party service providers may mitigate the extent to which the amendment to Rule 15c6–1(a) raises barriers to entry for broker-dealers. Because these barriers to entry may have adverse effects on competition between clearing members, the Commission believes that the use of third-party service providers may mitigate the adverse effects of the amendment to Rule 15c6–1(a) on competition between broker-dealers.

Existing market power may also affect the distribution of competitive impacts stemming from the amendment to Rule 15c6–1(a) across different types of market participants. While, as noted above, reductions in the credit, market, and liquidity risks that broker-dealers, CCPs, and other market participants are subject to during the standard settlement cycle could promote competition among clearing members and liquidity suppliers, these groups may benefit to differing degrees, depending on the extent to which they are able to capture the benefits of a shortened standard settlement cycle.

Finally, a shorter standard settlement cycle might also improve the capital efficiency of the clearance and settlement process, which will promote capital formation in U.S. securities markets and in the financial system generally.[649] A shorter standard settlement cycle will reduce the amount of time that collateral must be held for a given trade, thus freeing the collateral to be used elsewhere earlier. For a given quantity of trading activity, collateral will also be committed to clearing fund deposits for a shorter period of time. The greater collateral efficiency promoted by a shorter settlement cycle might also indirectly promote capital formation for market participants in the financial system in general. Specifically, the improved capital efficiency that results from a shorter standard settlement cycle will enable a given amount of collateral to support a larger amount of financial activity.

5. Quantification of Direct and Indirect Effects of a T+1 Settlement Cycle

In previous years, several industry groups have released estimates for compliance costs associated with a shorter standard settlement cycle, including the SIA, the Industry Steering Committee (''ISC''), and BCG.[650] Although all of these studies examined prior shortenings of the settlement cycle including from T+5 to T+3 and from T+3 to T+2, in the absence of a current study examining shortening from the current T+2 to T+1, they serve as a useful rough initial estimate of the costs involved in a settlement cycle shortening. The most recent of these, the BCG Study, performed a cost-benefit analysis of a T+2 standard settlement cycle. Below is a summary of the cost estimates in the BCG Study, and in the following subsections, an evaluation of these estimates as part of the discussion of the potential direct and indirect compliance costs related to the amendment to Rule 15c6–1(a). In addition, the Commission encouraged commenters to provide additional information to help quantify the economic effects that we are currently unable to quantify due to data limitations.

(a) Industry Estimates of Costs and Benefits

The BCG Study concluded that the transition to a T+2 settlement cycle would cost approximately $550 million in incremental initial investments across industry constituent groups,[651] which would result in annual operating savings of $170 million and $25 million in annual return on reinvested capital from clearing fund reductions.[652]

The BCG Study also estimated that the average level of required investments per firm could range from $1 to 5 million, with large institutional broker-dealers incurring the largest amount of investments on a per-firm basis, and buy side firms at the lower end of the spectrum.[653] The investment costs for ''other'' entities, including DTCC, DTCC ITP Matching (US) LLC (f/k/a Omgeo Matching (US) LLC), service bureaus, registered investment companies (''RICs''), and non-self-clearing broker-dealers totaled $70 million for the entire group. Within this $70 million, DTCC and Omgeo were estimated to have a compliance investment cost of $10 million each. The study's authors estimated that institutional broker-dealers would have operational cost savings of approximately 5%, retail broker-dealers of 2% to 4%, buy-side firms of 2%, and custodial banks of 10% to 15% for an industry total operational cost savings of approximately $170MM per year.[654]

The BCG Study also estimated the annual clearing fund reductions resulting from reductions in clearing firms' clearing funds requirements to be $25 million per year.[655] The study estimated this by multiplying the reduction in clearing fund requirements and the average Federal Funds target rate for the 10-year period up until 2008 (3.5%). The BCG Study also estimated the value of the risk reduction in buy side exposure to the sell side. The implied savings were estimated to be $200 million per year, but these values were not included in the overall cost-benefit calculations.

Several factors limit the usefulness of the BCG Study's estimates of potential costs and benefits of the amendment to Rule 15c6–1(a). First, a further shortening of the settlement cycle to T+1 may require investments in new technology and processes that were not necessary under the previous shortening to T+2. Second, technological improvements since 2012 when the report was first published, such as the increased use of computers and automation in post-trade processes, may have reduced the cost of the upgrades necessary to comply with a shorter

[648] *See supra* Part VIII.B.2.

[649] *See supra* Part VIII.A. for more discussion regarding capital formation and efficiency.

[650] *See* SIA Business Case Report, *supra* note 323; *see also* BCG Study, *supra* note 565; PricewaterhouseCoopers LLP & ISG, Shortening the Settlement Cycle: The Move to T+2 (June 2015) (''ISG White Paper''), *http://www.ust2.com/pdfs/ssc.pdf*. This release uses ''ISG'' rather than ''ISC'' (''Industry Steering Committee,'' the term used in the ISG White Paper) when referring to the T+2 effort so that this release clearly distinguishes between the ISC's current work on T+1. The SIA has since merged with other groups to form SIFMA.

[651] The BCG Study generally refers to ''institutional broker-dealers,'' ''retail broker-dealers,'' ''buy side'' firms, and ''custodian banks,'' without defining these particular groups. The Commission uses these terms when referring to estimates provided by the BCG Study but notes that its own definitions of various affected parties may differ from those in the BCG Study.

[652] *See* BCG Study, *supra* note 565, at 9–10.

[653] *Id.* at 30–31.

[654] *Id.* at 41.

[655] *See supra* note 565 for a discussion of the impact on this estimate of increases in daily trading volume since the time of the BCG study.

settlement cycle. This may, in turn, reduce the costs associated with the amendment,[656] as a larger portion of market participants may have already adopted many processes that would reduce the cost of a transition to a shorter settlement cycle. In addition, the BCG Study considered as a part of its cost estimates operational cost savings as a result of improvements to operational efficiency.

Lastly, the BCG Study was premised on survey responses by a subset of market participants that may be affected by the rule. Surveys were sent to 270 market participants and 70 responses were received, including 20 institutional broker-dealers, prime brokers, and correspondent clearers; 12 retail broker-dealers; 17 buy side firms; 14 registered investment advisers; and seven custodian banks. Given the low response rate, as well as the uncertainty regarding the sample of market participants that was asked to complete the survey, the Commission cannot conclude that the cost estimates in the BCG Study are representative of the costs of all market participants.[657]

(b) Estimates of Costs

The amendment to Rule 15c6–1(a) will generate direct and indirect costs for market participants, who may need to modify and/or replace multiple systems and processes to comply with a T+1 standard settlement cycle. The T+1 Playbook included a timeline with milestones and dependencies necessary for a transition to a T+1 standard settlement cycle, as well as activities that market participants should consider in preparation for the transition, and the Commission believes that this provides an initial guide to the activities that will be necessary for a transition to a T+1 standard settlement cycle.[658] The Commission estimates that many of the activities for migration to a T+1 standard settlement cycle will stem from behavior modification of market participants and systems testing.[659] These modifications will include a compression of the settlement timeline, as well as an increase in the fees that brokers may impose on their customers for trade failures. Although the T+1 Playbook does not include any direct estimates of the compliance costs for a T+1 standard settlement cycle, the Commission utilizes the timeline in the T+1 Playbook for specific actions necessary to migrate to a T+1 settlement cycle to directly estimate the inputs needed for migration, and form preliminary compliance cost estimates for the shortening to T+1 standard settlement cycle.

In addition, the T+1 Playbook, the ISG White Paper, and the BCG Study identified several categories of actions that market participants might need to take to comply with a T+2 settlement cycle and likely also with a T+1 settlement cycle—processing, asset servicing, and documentation.[660] While the following cost estimates for these remedial activities span industry-wide requirements for a migration to a T+1 settlement cycle, the Commission does not anticipate each market participant directly undertaking all of these activities for several reasons. First, some market participants work with third-party service providers to facilitate certain functions that may be impacted by a shorter standard settlement cycle, such as trade processing and asset servicing, and thus may only bear the costs of the requirements through updates to systems and processes that interface with and fees paid to those service providers. Second, certain costs might only fall on specific categories of entities. For example, the costs of updating the Continuous Net Settlement (''CNS'') and ID Net systems should only directly fall on NSCC, DTC, and members/participants of those clearing agencies. Finally, some market participants may already have the processes and systems in place to accommodate a T+1 standard settlement cycle or will be able to adjust to a T+1 settlement cycle without incurring significant costs. For example, some market participants may already have the systems and processes in place to meet the requirements for same-day trade affirmation and matching consistent with the requirements in new Rule 15c6–2.[661] These market participants may thus bear a significantly lower cost to update their trade affirmation systems/processes to settle on a T+1 standard settlement cycle.[662]

The following section examines several categories of market participants and includes estimates the compliance costs for each category. The Commission's estimate of the number and type of personnel that may be required is based on the scope of activities for a given category of market participant necessary for the market participant to migrate to a T+1 settlement cycle, the market participant's role within the clearance and settlement process, and the amount of testing required to minimize undue disruptions.[663] Hourly salaries for personnel are from SIFMA's Management and Professional Earnings in the Securities Industry 2013.[664] These estimates use the timeline from the T+1 Playbook to determine the length of time personnel will work on the activities necessary to support a T+1 settlement cycle. The timeline provides an indirect method to estimate the inputs necessary to migrate to a T+1 settlement cycle, rather than relying directly on survey response estimates. The Commission acknowledges many entities are already undertaking activities to support a migration to a T+1 settlement cycle in anticipation of the amendment. However, to the extent that the costs of these activities have already been incurred, the Commission considers these costs sunk, and they are not included in the analysis below.

(1) FMUs—CCPs and CSDs

CNS, NSCC/DTC's ID Net service, and other systems will require adjustment to support a T+1 standard settlement cycle. The T+1 Playbook includes an estimate that regulation-dependent planning, implementation, testing, and migration activities associated with the transition to a T+1 settlement cycle could last up to six quarters.[665] The Commission estimates that these activities will impose a one-time compliance cost of $16.1 million[666] for

[656] *See supra* Part VIII.A. While market participants may have already made investments consistent with implementing a shorter settlement cycle, the fact that these investments have not resulted in a shorter settlement cycle is consistent with the existence of coordination problems among market participants.

[657] *See* BCG Study, *supra* note 565, at 15.

[658] *See* T+1 Playbook, *supra* note 134.

[659] *See id.* at 67–68 (discussing customer and staff education); *see also id.* at 103–107 (discussing testing and migration).

[660] *See id.* at 14.

[661] *See* BCG Study, *supra* note 565, at 23.

[662] The BCG Study, as it is based on survey responses from market participants, does reflect the heterogeneity of compliance costs for market participants.

[663] For example, FMUs that play a critical role in the clearance and settlement infrastructure would require more testing associated with a T+1 standard settlement cycle than institutional investors.

[664] To monetize the internal costs, the Commission staff used data from SIFMA publications, modified by Commission staff to account for an 1800 hour work-year, and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. *See* SIFMA, *Management and Professional Earnings in the Security Industry—2013* (Oct. 7, 2013); SIFMA, *Office Salaries in the Securities Industry—2013* (Oct. 7, 2013). These figures have been adjusted for inflation using the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *https://www.bls.gov/data/inflation_calculator.htm.*

[665] *See* T+1 Playbook, *supra* note 134, at 14. The T+1 Playbook assumes an implementation date during the third quarter of 2024. We assume that the necessary tasks and the total time required to complete them would be similar for an earlier implementation date.

[666] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity, industry testing, and

DTC and NSCC each. After this initial compliance cost, the Commission expects that both DTC and NSCC will incur minimal ongoing costs from the transition to a T+1 standard settlement cycle, because the Commission estimates that the majority of costs will stem from pre-migration activities, such as implementation, updates to systems and processes, and testing.

(2) Matching/ETC Providers—Exempt Clearing Agencies

Matching/ETC Providers may need to adapt their trade processing systems to comply with a T+1 standard settlement cycle. This may include actions such as updating reference data, configuring trade match systems, and configuring trade affirmation systems to affirm trades on T+0. Matching/ETC Providers will also need to conduct testing and assess post-migration activities. The Commission estimates that these activities will impose a one-time compliance cost of up to $16.1 million [667] for each Matching/ETC Provider. However, the Commission acknowledges that some ETC providers may have a higher cost burden than others based on the volume of transactions that they process. The Commission expects that ETC providers will incur minimal ongoing costs after the initial transition to a T+1 standard settlement cycle because the Commission estimates that the majority of the costs of migration to a T+1 settlement cycle entail behavioral changes of market participants and pre-migration testing.

New Rule 17Ad–27 requires a CMSP to establish, implement, maintain, and enforce reasonably designed, written policies and procedures. Based on the similar policies and procedures requirements, and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8) and (e)(2),[668] the Commission estimates that respondent CMSPs will incur an aggregate one-time cost of approximately $27,600.[669]

The rule also imposes ongoing burdens on a respondent CMSP as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to the required annual report. As discussed in Part V.C.2, the Commission has modified the final rule to identify specific data elements to be included in the annual report. Based on the similar reporting requirements, and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(e)(23),[670] the Commission estimates that the ongoing activities required by new Rule 17Ad–27 will impose an aggregate annual cost of this ongoing burden of approximately $71,400.[671]

(3) Market Participants—Investors, Broker-Dealers, Investment Advisers, and Bank Custodians

The overall compliance costs that a market participant incurs will depend on the extent to which it is directly involved in functions related to clearance and settlement including trade confirmation/affirmation, asset servicing, and other activities. For example, retail investors may bear few (if any) direct costs in a transition to a T+1 standard settlement cycle, because their respective broker-dealer handles the back-office functions of each transaction. However, as is discussed below, this does not imply that retail investors will not face indirect costs from the transition, such as those passed through from broker-dealers or banks.

Institutional investors may need to configure systems and update reference data, which may also include updates to trade funding and processing mechanisms, to operate in a T+1 environment. The Commission estimates that this will require an initial expenditure of $4.29 million per entity.[672] However, these costs may vary depending on the extent to which a particular institutional investor has already automated its processes. The Commission expects institutional investors will incur minimal ongoing direct compliance costs after the initial transition to a T+1 standard settlement cycle.

Broker-dealers that serve institutional investors will not only need to configure their trading systems and update reference data, but may also need to update trade confirmation/affirmation systems, documentation, cashiering and asset servicing functions, depending on the roles they assume with respect to their clients. The Commission estimates that, on average, each of these broker-dealers will incur an initial compliance cost of $8.74 million.[673] The Commission expects that these broker-dealers will incur minimal ongoing direct compliance costs after the initial

migration lasting six quarters. The Commission assumes 10 operations specialists (at $159 per hour), 10 programmers (at $316 per hour), and 1 senior operations manager (at $426/hour), working 40 hours per week. (10 × $159 + 10 × $316 + 1 × $426) × 6 × 13 × 40 = $16,149,120.

[667] The estimate is based on the T+1 Playbook timeline, which estimates regulation- dependent implementation activity for trade systems, matching, affirmation, testing, and post- migration testing lasting six quarters. The Commission assumes 10 operations specialists (at $159 per hour), 10 programmers (at $316 per hour), and 1 senior operations manager (at $426/hour), working 40 hours per week. (10 × $159 + 10 × $316 + 1 × $426) × 6 × 13 × 40 = $16,149,120.

[668] *See* Clearing Agency Standards, Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219, 66260 (Nov. 2, 2012) (''Clearing Agency Standards Adopting Release''); Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70891–92 (Oct. 13, 2016) (''CCA Standards Adopting Release'').

[669] There are currently three CMSPs and the Commission anticipates that one additional entity may seek to become a CMSP in the next three years. The aggregate cost was estimated as follows: (Assistant General Counsel at $543/hour × 8 hours = $4,344) + (Compliance Attorney at $426/hour × 6 hours = $2,556) = $6,900 × 4 CMSPs equals $27,600.

[670] *See* CCA Standards Adopting Release, *supra* note 668, at 70899.

[671] This figure was calculated as follows: [(Compliance Attorney at $426/hour × 24 hours = $10,224) + (Computer Operations Manager at $514/hour × 10 hours = $5,140) = $15,364 × 4 CMSPs = $61,456]. In addition, we estimate that the Inline XBRL requirement would require respondent CMSPs to spend $1,200 each year to license and renew Inline XBRL compliance software and/or services, and incur 3 internal burden hours to apply and review Inline XBRL tags for the disclosure requirements on the report, resulting in a total annual aggregate cost of $9,912 [(Compliance Attorney at $426/hour × 3 hours = $1,278) + $1,200 in external costs = $2,478 × 4 CMSPs = $9,912]. The total costs are the non-XBRL related costs ($61,546) + XBRL related costs ($9,912) = $71,368. We have increased these estimates because, compared to the proposal, the reports required by Rule 17Ad–27 will contain significantly more disclosures, and each of those additional disclosures will need to be tagged. In addition, respondent CMSPs that do not already have access to EDGAR would be required to file a Form ID so as to obtain the access codes that are required to file or submit a document on EDGAR. We anticipate that each respondent would require 0.30 hours to complete the Form ID, and for purposes of the PRA, that 100% of the burden of preparation for Form ID will be carried by each respondent internally. Because two respondent CMSPs already have access to EDGAR, we anticipate that proposed amendments would result in a one-time nominal increase of 0.60 burden hours for Form ID, which would not meaningfully add to, and would effectively be encompassed by, the existing burden estimates associated with these reports.

[672] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, and testing activity to last six quarters. We assume 2 operations specialists (at $159 per hour), 2 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (2 × $159 + 2 × $316 + 1 × $426) × 6 × 13 × 40 = $4,293,120.

[673] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, documentation, asset servicing, and testing to last six quarters. We assume 5 operations specialists (at $159 per hour), 5 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (5 × $159 + 5 × $256 + 1 × $345) × 6 × 13 × 40 = $8,739,120.

transition to a T+1 standard settlement cycle.

Broker-dealers that also serve retail customers may need to spend significant resources during the implementation period to educate their clients about the shorter settlement cycle. The Commission estimates that these broker-dealers will incur an initial compliance cost of $12.73 million each.[674] However, unlike previously mentioned market participants, the Commission expects that broker-dealers that serve retail investors may face significant one-time compliance costs after the initial transition to T+1. Retail investors may require additional education and customer service, which may impose costs on their broker-dealers. The Commission estimates that a reasonable upper bound for the costs associated with this requirement is $30,000 per broker-dealer.[675] Assuming all clearing and introducing broker-dealers must educate retail customers, the upper bound for the aggregate costs of post implementation retail investor education will be approximately $38.2 million.[676]

As discussed above in Part III.C, the Commission is modifying proposed Rule 15c6–2 to provide two options by which broker-dealers may comply with the rule, as adopted. The two options are set forth in new paragraphs (a)(1) and (2). The first option, reflected in paragraph (a)(1), is the proposed requirement for written agreements, modified in the ways discussed above. The second option, reflected in paragraph (a)(2), is an alternative to the written agreements requirement, in lieu of which a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

The first option, reflected in paragraph (a)(1), will require broker-dealers to either enter into or modify existing written agreements with the relevant parties that ensure the completion of the allocation, confirmation, and affirmation process. Such parties may be the customer, the customer's investment adviser, the customer's custodian, or another agent acting directly or indirectly on behalf of the customer. The number of such agreements will vary depending on the number of relevant parties which will vary by the size of the broker-dealer, the number of customers, and the particular business relationship that the broker-dealer has with each of them. As discussed in Part III.B.5 above, several commenters expressed a number of concerns with the written agreement requirement as proposed. First, commenters stated that in many scenarios written agreements do not currently exist between the parties to an institutional transaction and would be highly burdensome to establish specifically for the purpose of facilitating same day affirmation. In addition, commenters expressed the view that the proposed written agreement requirement would create unnecessary practical burdens and costs.[677]

The Commission acknowledges that in cases such as the ones described by commenters above—where these written agreements do not already exist, a client may not authorize its investment adviser to enter into this type of written agreement, or various third parties are relied upon to complete certain elements of the allocation, confirmation, and affirmation process—a requirement to enter into written agreements specifically to address the same-day affirmation objective may create substantial burdens and challenges for the parties to an institutional transaction. Accordingly, as discussed in Part III.C above, the Commission is including in the final rule a second option, reflected in paragraph (a)(2), that specifies as an alternative to the written agreement requirement a policies and procedures requirement.

The Commission believes that establishing policies and procedures as an alternative approach to compliance aside from entering into written agreements enables broker-dealers to avoid the substantial burdens and challenges that may be associated with negotiating written agreements in some cases. However, the Commission also believes that it may be less costly for broker-dealers that already use written agreements to manage their commercial relationships with their customers' advisers, custodians or other agents using such agreements and that broker-dealers will generally chose to comply with the rule using the option that is less costly for that broker-dealer's particular circumstances.

The second option, reflected in paragraph (a)(2) of new Rule 15c6–2, requires a broker-dealer to establish, maintain, and enforce policies and procedures to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable and no later than the end of the day on trade date, in such form as necessary to achieve settlement. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions,[678] and the securities industry considers achieving ''same-day affirmation'' an industry best practice.[679] Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then develop modifications to address those gaps.[680] Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours to create policies and procedures required under the rule,[681] and that the cost of this one

[674] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, documentation, asset servicing, customer education and testing to last five quarters. We assume 5 operations specialists (at $159 per hour), 5 programmers (at $316 per hour), 5 trainers (at $256 per hour) and 1 senior operations manager (at $426 per hour), working 40 hours per week. (5 × $159 + 5 × $316 + 5 × $256 + 1 × $426) × 6 × 13 × 40 = $12,732,720.

[675] This estimate is based on the assumption that a broker-dealer chooses to educate customers using a 10-minute video that takes at most $3,000 per minute to produce. *See* Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71388, 71529 n.1683 (Nov. 16, 2015).

[676] Calculated as $30,000 per broker-dealer × (92 broker-dealers reporting as self-clearing but not introducing + 1,114 broker-dealers reporting as introducing but not self-clearing + 68 broker-dealers reporting as introducing and self-clearing) = $38,220,000.

[677] *See supra* note 222.

[678] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[679] *See supra* note 515.

[680] Rule 15c6–2(b)(1) requires that the written policies and procedures that any broker or dealer may establish, maintain, and enforce as required by Rule 15c6–2 should, among other requirements: (1) Identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction, and (2) Describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation. In cooperation with the broker or dealer, the relevant parties (including investment advisers and custodians) may incur some costs; however, those costs will vary depending on current systems at the relevant party and broker or dealer, the nature of the business relationship between the relevant party and the broker or dealer, and how the business of the relevant party is organized.

[681] This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

time burden per broker-dealer would be $88,880.[682] The Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.[683] The total industry cost is estimated to be approximately $36.5M.[684]

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on respondent broker-dealers of 480 hours,[685] and a cost per broker-dealer of $172,416.[686] The total industry cost is estimated to be approximately $107M.[687]

The Commission believes this estimate is an upper bound on the compliance costs associated with the second option, reflected in paragraph (a)(2) of new Rule 15c6–2 for at least two reasons. First, broker-dealers may choose the first option, reflected in paragraph (a)(1), if it is less burdensome for them to do so. Second, if a large number of broker-dealers chose the second option it may be more efficient for a third party to develop a set of best practices that could form the basis of the policies and procedures required for each broker-dealer that choses the second option.

Custodian banks will need to update their asset servicing functions to comply with a shorter settlement cycle. The Commission estimates that custodian banks will incur an initial compliance cost of $4.29 million,[688] and expects custodian banks to incur minimal ongoing compliance costs after the initial transition because the Commission believes that most of the costs will stem from pre-migration updates and testing.

The amendment to Rule 204–2 will require registered investment advisers to make and keep records of confirmations they receive and of allocations and affirmations they send or receive for securities transactions that are subject to the requirements of Rule 15c6–2(a). Based on Form ADV filings, approximately 15,160 advisers registered with the Commission are required to make and keep copies of certain books and records relating to their advisory business.[689] The Commission further estimates that of these advisers, 2,169 registered advisers will not retain the required records under the final rule because they do not have any institutional advisory clients. Therefore, the Commission estimates that 12,991 advisers will be subject to the final amendment to Rule 204–2 under the Advisers Act because they will facilitate transactions with a broker or dealer that is subject to the requirements of Rule 15c6–2(a) and therefore will be subject to the related recordkeeping requirement.[690] As discussed above, based on staff experience, the Commission believes that many advisers already have recordkeeping processes in place to make and keep records of confirmations received, and allocations and affirmations sent or received. The Commission believes these are customary and usual business practices for many advisers, but that some small and mid-size advisers may not currently retain these records. Further, the Commission believes that the vast majority of these books and records are kept in electronic fashion with an ability to capture a date and time stamp, such as in a trade order management or other recordkeeping system, through system logs of file transfers, email archiving, or as part of DTC's Institutional Trade Processing services, but that some advisers maintain paper records (*e.g.,* confirmations) and/or communicate allocations by telephone. In addition, as noted in Part III.C above, we believe that up to 70% of institutional trades are affirmed by custodians, and therefore advisers may not retain or have access to the affirmations these custodians sent to brokers or dealers.[691]

In a change from the proposal, we estimate three-hour information collection burden annually per impacted adviser associated with the new recordkeeping requirements.[692] We estimate that the amendments to Rule 204–2 will result in an additional internal cost of approximately $3.02 million per year.[693] This estimate takes into account potential additional burdens associated with the new recordkeeping requirement for advisers that do not currently retain these records, but will be required to do so under the final rule. These estimates are also designed to address any burdens for advisers that may retain such documents, but do not do so electronically and/or do not time and date stamp such documents or otherwise retain the documents in a way that complies with the final rule.[694] In addition, the revised estimates factor in any costs associated with receiving copies of, or having access to, required records that are retained by a custodian or other third-party, including cost-savings associated with the adviser's ability to rely on third parties to meet its recordkeeping obligations under the rule.[695]

(4) Indirect Costs

In estimating these implementation costs, the Commission notes that market

[682] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 20 hours = $10,860) + (Compliance Attorney at $426/hour × 120 hours = $51,120) + (Senior Risk Management Specialist at $417/hour × 20 hours = $8,340) + (Risk Management Specialist at $232/hour × 80 hours = $18,560) = $88,880 × 411 respondents = $36,529,680.

[683] *See infra* Part IX.C.2.

[684] *See supra* note 682.

[685] This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

[686] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 48 hours = $26,064) + (Compliance Attorney at $426/hour × 192 hours = $81,792) + (Senior Risk Management Specialist at $417/hour × 48 hours = $20,016) + (Risk Management Specialist at $232/hour × 192 hours = $44,544) = $172,416 × 411 respondents = $70,862,976.

[687] This figure was calculated as follows: $36,529,680 (industry one-time burden) + $70,862,976 (industry ongoing burden) = $107,392,656.

[688] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for asset servicing and testing to last six quarters. We assume 2 operations specialists (at $159 per hour), 2 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (2 × $159 + 2 × $316 + 1 × $426) × 6 × 13 × 40 = $4,293,120.

[689] *See infra* note 4 to Table 2.

[690] *See id.*

[691] *See* DTCC ITP Forum Remarks, *supra* note 264.

[692] The Commission believes that most of the necessary records are already being retained as advisers generally retain their communications and trade instructions to comply with other recordkeeping obligations. If these records are not being kept, the Commission believes the burden will be small to start retaining them because the requirement pertains to records that are sent or received and does not require new records to be created.

[693] The estimate assumes that the amendments to Rule 204–2 will result in an incremental increase in the collection of information burden estimate by 3 hours for 12,991 investment advisers. For each such adviser, we assume 1.5 hour for a compliance clerk (at $82 per hour) and 1.5 hour for a general clerk (at $73 per hour) = $233 per investment adviser * 12,991 investment advisers = an incremental increase of $3,020,408 in internal costs.

[694] For more discussion, *see infra* Part IX.A.

[695] One commenter recommended that the Commission update these estimates. *See infra* Part IX.A for a discussion of the commenter's recommendation and the Commission's justification for the burden estimates.

participants who bear the direct costs of the actions they undertake to comply with the amendment to Rule 15c6–1 may pass these costs on to their customers. For example, retail and institutional investors might not directly bear the cost of all of the necessary upgrades for a T+1 standard settlement cycle, but might indirectly bear these costs as their broker-dealers might increase their fees to amortize the costs of updates among their customers. The Commission is unable to quantify the overall magnitude of the indirect costs that retail and institutional investors may bear, because such costs will depend on the market power of each broker-dealer, and each broker-dealer's willingness to pass on the costs of migration to a T+1 standard settlement cycle to its customers. However, the Commission believes that in situations where broker-dealers have little or no competition, broker-dealers will have an incentive to absorb part of the cost increase. As discussed in Part VIII.C.5.b)(3) above, this could be as high as the full amount of the estimated $8.74 million for each broker-dealer that serves institutional investors, and $12.73 million for each broker-dealer that serves institutional and retail investors. However, in situations where broker-dealers face heavy competition for customers, there may be little or no economic profits and price may equal marginal cost so an increase in costs could be fully passed through to the customer.[696]

As noted in Part VIII.B.4, the ability of market participants to pass implementation costs on to customers likely depends on their relative bargaining power. For example, CCPs, like many other utilities, exhibit many of the characteristics of natural monopolies and, as a result, may have market power, particularly relative to broker-dealers who submit trades for clearing. This means that CCPs may be able to share implementation costs they directly face related to shortening the settlement cycle with broker-dealers through higher clearing fees. Conversely, to the extent that institutional investors have market power relative to broker-dealers, broker-dealers may not be in a position to impose indirect costs on them.

(5) Industry-Wide Costs

To estimate the aggregate, industry-wide cost of a transition to a T+1 standard settlement cycle, the Commission takes its own per-entity estimates and multiplies them by our estimate of the respective number of entities. The Commission estimates that there are 1,229 buy-side firms, 160 self-clearing broker-dealers, and 48 custodian banks.[697] Additionally, while there are three Matching/ETC Providers, the Commission believes that only one of these is currently providing services in the U.S. We estimate there are 1,274 broker-dealers that will incur investor education costs. One way to establish a total industry initial compliance cost estimate is to multiply each estimated per-entity cost by the respective number of entities and sum these values, which results in an estimate of $7.76 billion.[698] The Commission, however, believes that this estimate is likely to overstate the true initial cost of transition to a T+1 standard settlement cycle for a number of reasons. First, our per-entity estimates do not account for the heterogeneity in market participant size, which may have a significant impact on the costs that market participants face. While the BCG Study included both estimates of the number of entities in different size categories as well as estimates of costs that an entity in each size category is likely to incur, it did not provide sufficient underlying information to allow the Commission to estimate the relationship between participant size and compliance cost and, thus, we cannot produce comparable estimates. The Commission solicited comment on the extent to which market participants believe that the compliance costs for Rule 15c6–1(a) would scale with market participant size and did not receive data that could be used to improve these estimates.

Second, investments by third-party service providers may mean that many of the estimated compliance costs for market participants are duplicated. The BCG Study suggests that ''leverage'' from service providers may yield a savings of $194 million, reducing aggregate costs by approximately 29%.[699] In the T+1 Proposing Release, the Commission sought further comment on the extent to which the efficiencies generated by the investments of service providers might reduce the compliance costs of market participants. Taking into account potential cost reductions due to repurposing existing systems and using service providers as described above, the Commission believes that $5.51 billion represents a reasonable range for the total industry initial compliance costs.[700]

In addition to these initial costs, a transition to a shorter settlement cycle may also result in certain ongoing industry-wide costs. Though the Commission believes that a move to a shorter settlement cycle will generally bring with it a reduced reliance on manual processing, a shorter settlement cycle may also exacerbate remaining operational risk. This is because a shorter settlement cycle will provide market participants with less time to resolve errors. For example, if there is an entry error in the trade match details sent by either counterparty for a trade, both counterparties will have one extra day to resolve the error under the baseline than in a T+1 environment. For these errors, a shorter settlement cycle may increase the probability that the error ultimately results in a settlement fail. However, the Commission believes that a large variety of operational errors are possible in the clearance and settlement process, and some of these errors are likely to be infrequent, the Commission is unable to quantify the impact that a shorter settlement cycle may have on the ongoing industry-wide costs stemming from a potential increase in operational risk.

D. Consideration of Reasonable Alternatives

1. Delete 15c6–1(c) to T+2

In the T+1 Proposing Release the Commission proposed to delete paragraph (c) of the rule,[701] which would, in conjunction with the proposed amendment to paragraph (a), establish a T+1 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET. The Commission requested comment on whether, as an alternative to deleting paragraph (c), it be amended in order to shorten the settlement cycle for firm commitment offerings to T+2. In response to comments received and as discussed in Part II.B.3 and Part II.C.4

[696] *See supra* note 621.

[697] The estimate for the number of buy-side firms is based on the Commission's 13(f) holdings information filers with over $1 billion in assets under management, as of December 31, 2020. The estimate for the number of broker-dealers is based on FINRA FOCUS Reports of firms reporting as self-clearing. *See supra* note 525 and accompanying text. The estimate for the number of custodian banks is based on the number of ''settling banks'' listed in DTC's Member Directories, *http://www.dtcc.com/client-center/dtc-directories*.

[698] Calculated from estimates derived above in this section (Part VIII.C.5) as 160 broker-dealers (self-clearing) × $12,733,000 + + 48 custodian banks × $4,293,000 + 1,229 buy-side firms × $4,293,000 + 4 Matching/ETC Providers × ($16,149,000 + $6,900) + 2 FMUs × $16,149,000 + 12,991 IAs × $233 + 411 broker-dealers with institutional customers × $88,880$ 7,763M.

[699] *See* BCG Study, *supra* note 565, at 79.

[700] The lower bound of this range is calculated as ($7.76 billion × (1 − 0.29)) = $5.51 billion.

[701] *See* T+1 Proposing Release, *supra* note 2, at 10448–49.

above, the Commission is adopting this alternative.

2. Adopt 17Ad–27 To Require Certain Outcomes

The Commission proposed Rule 17Ad–27 to require a CMSP establish, implement, maintain, and enforce policies and procedures to facilitate straight-through processing for transactions involving broker-dealers and their customers.[702] As proposed, Rule 17Ad–27 would require a CMSP to submit every twelve months to the Commission a report that describes the following: (i) the CMSP's current policies and procedures for facilitating straight-through processing; (ii) its progress in facilitating straight-through processing during the twelve month period covered by the report; and (iii) the steps the CMSP intends to take to facilitate and promote straight-through processing during the twelve month period that follows the period covered by the report.[703]

The Commission proposed a ''policies and procedures'' approach in developing the rule because it believes such an approach will remain effective over time as CMSPs consider and offer new technologies and operations to improve the settlement of institutional trades. The Commission also believes that improving the CMSPs' systems to facilitate straight-through processing can help market participants consider additional ways to make their own systems more efficient. In addition, a ''policies and procedures'' approach can help ensure that a CMSP considers, in a holistic fashion, how the obligations it applies to its users will advance the implementation of methodologies, operational capabilities, systems, or services that support straight-through processing.

The Commission has considered as an alternative to the policies and procedures approach in proposed Rule 17Ad–27, proposing a rule to require CMSPs to achieve certain outcomes that would facilitate straight-through processing. For example, the Commission considered a requirement that a CMSP do the following: (i) enable the users of its service to complete the matching, confirmation, or affirmation of the securities transaction as soon as technologically and operationally practicable and no later than the end of the day on which the transaction was effected by the parties to the transaction; or (ii) forward or otherwise submit the transaction for settlement as soon as technologically and operationally practicable, as if using fully automated systems.

However, as discussed in Part V.C.1. above, the Commission believes that a policies and procedures approach will better meet the objectives of promoting STP by requiring policies and procedures that include a holistic review and framework for considering how systems and processes facilitate straight-through processing, and that can adapt over time to changes in technology and operations, both among and beyond the CMSP's systems. Therefore the Commission is adopting new Rule 17Ad–27 as proposed but with the two modifications discussed above.

3. Adopt Rule Changes to Rule 15c6–2 as Recommended by SIFMA's August Comment Letter

As previously mentioned in Part III.B.7., the Commission received an additional comment letter from SIFMA addressing alternatives to proposed Rule 15c6–2.[704] SIFMA recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement for policies and procedures that can support faster processing, which would allow individual firms to advance the Commission's interest in same-day affirmation while ensuring that broker-dealers can design policies and procedures tailored to their business models, products, and unique customer bases.[705]

SIFMA's recommendation included a number of elements. First, SIFMA requested that Rule 15c6–2 be revised to require policies and procedures reasonably designed to maintain timely settlement rates.[706] Second, SIFMA recommended that such policies and procedures: (i) address the timing of allocations, confirmations, and affirmations to ensure timely settlement; (ii) include a communication plan with market participants; (iii) provide a description of a broker-dealers' ability to monitor compliance; (iv) include the development of controls and supervisory procedures; and (v) include the development of metrics to measure compliance.[707]

The Commission agrees that the policies and procedures approach is beneficial, and thus is revising final Rule 15c6–2 to allow broker-dealers to achieve compliance with the rule either by entering into written agreements or by establishing, implementing, and maintaining policies and procedures. Economically, options always have a positive value when they allow the holder to choose amongst a menu of choices; in this case, the ability to choose amongst approaches should present a benefit to broker-dealers, who can better assess which one of these two alternatives provides the most efficient path to compliance with the rule. Discussion of the costs for each of these alternatives can be found in section C.5.(b)(3).

In terms of what the policies and procedures dictate, the Commission believes, as mentioned in Part III.B.7, that timely settlement is a separate, if related, objective from same-day affirmation. As discussed in Part III.B.1 above, the Commission continues to believe that improving affirmation rates on trade date is an objective separate and apart from, though related to, shortening the settlement cycle, because it promotes an orderly settlement process regardless of the length of the settlement cycle.

Other than the different specifications of the policies and procedures just mentioned, the Commission believes that it is generally adopting SIFMA's recommendations with respect to: addressing the timing of allocations, confirmations, and affirmations to ensure timely settlement; including a communication plan with market participants; providing a description of a broker-dealers' ability to monitor compliance; including the development of controls and supervisory procedures; and including the development of metrics to measure compliance.

4. Replace the Written Agreement Requirement in Proposed Rule 15c6–2 With a Principles-Based Approach

The Commission received comment letters from the Investment Company Institute (ICI) and from the American Securities Association (ASA) that advocate for a principles-based approach that allows broker-dealers to adopt their own internal policies that promote the allocation, confirmation and affirmation of trades for relevant customers. That would include, according to ICI, a requirement that broker-dealers adopt policies and procedures ''reasonably designed'' to ensure that allocations, confirmations, and affirmations are completed on a timeline that allows settlement on T+1.

The Commission is mindful that each broker-dealer is best suited to assess the

[702] *See id.* at 10457–61.

[703] As adopted, the Rule 17Ad–27 reporting requirement has been revised. *See supra* Part V.C.

[704] *See* SIFMA August 26th Letter, *supra* note 194, at 2–3.

[705] *See id.* at 2. In Part III.B.5., above, the Commission has previously discussed why it believes it appropriate to retain the written agreement requirement in the rule, while also adding an option to establish, maintain, and enforce written policies and procedures.

[706] *See id.*

[707] *See id.* at 2–3.

challenges that it faces in accelerating the settlement process. Therefore, as already discussed, the Commission is providing broker-dealers with the additional choice of a policies and procedures alternative besides the written agreements requirement. The Commission believes that the policies and procedures alternative affords broker-dealers sufficient flexibility without sacrificing the main objective of the rule, which is solving the collective action problem of improving the overall current affirmation rates of 68%. A principles-based approach relies almost exclusively on the existing commercial incentives discussed on Part III.B.1, which the Commission already considered insufficient to overcome the incremental gains in same-day affirmation rates to date.

5. Select a Later Implementation Date for Adoption of the Rule

The Commission received a number of comment letters [708] that recommend a later date than the proposed implementation date of March 31, 2024. Reasons given by the industry for more time include the additional convenience attendant to a transition to T+1 settlement over a three-day weekend (*e.g.,* Memorial Day, Labor Day); the possibility of coordinating the T+1 settlement transition with a closely aligned market (*i.e.,* Canada on Labor Day 2024); and the ability to have more thorough preparation and testing protocols, among others.

The Commission acknowledges that there are additional costs to an earlier transition date, as a more compressed timeline to implementation will have an opportunity cost over scarce operational resources. Additional time also allows for more robust preparation and testing.[709] Nevertheless, postponing the implementation of T+1 settlement delays the realization of the market-wide benefits of the rule. While there may be increases in up-front costs from an earlier date, there are also benefits attendant to general reductions in liquidity, credit and market risk. Periods of high volatility could materialize on any date between the implementation date and any of the suggested dates, and such occurrence would reduce the benefits of the rule precisely at the moment when it is most useful. Given the extent of planning, operational changes, and testing necessary to achieve a successful and orderly transition to a T+1 standard settlement cycle,[710] the Commission is moving the compliance date to Tuesday, May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed, providing market participants with a three-day weekend to facilitate the transition to a T+1 standard settlement cycle, and providing market participants an additional two months. The Commission believes that a May 28, 2024, compliance date will ensure an orderly transition to a T+1 standard settlement cycle that realizes the substantial benefits of shortening the settlement cycle as soon as possible.

IX. Paperwork Reduction Act

As discussed in the proposing release, Rule 17Ad–27 and the amendments to Rule 204–2(a) contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[711] The Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. For the amendments to Rule 204–2(a), the title of the information collection is ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB Control No. 3235–0278). For Rule 17Ad–27, the title of the information collection is ''Shortening the Securities Transaction Settlement Cycle'' (OMB Control No. 3235–0799).[712] In addition, the modifications to Rule 15c6–2 contain ''collection of information'' requirements, which will be submitted to OMB for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission received several comments concerning its PRA estimates for the proposed amendment to Rule 204–2, which are discussed below. In response to these comments, and in view of the changes between the proposed and adopted recordkeeping requirements, the Commission is modifying its PRA estimates, as reflected in Part IX.A. The Commission is also modifying its PRA estimates for Rule 17Ad–27 in view of the changes between the proposed and adopted rule requirements, as explained in Part IX.B. In addition, the Commission corrects a tabulation error for Rule 17Ad–27 that was included in the T+1 Proposing Release.

Finally, because the modifications to Rule 15c6–2 discussed in Part III.C would impose PRA burdens, the Commission below provides PRA estimates for Rule 15c6–2. The Commission will submit these burdens to OMB for review in accordance with the PRA.[713]

A. Advisers Act Rule 204–2

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Advisers Act Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its regulatory and examination program. Responses to the requirements of the proposed amendments to Rule 204–2 that are provided to the Commission in the context of its regulatory and examination program are kept confidential subject to the provisions of applicable law.[714]

The final amendments to Rule 204–2 will require all registered investment advisers to make and keep certain records with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). Those records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received.

The proposed amendments to Rule 204–2 would have required recordkeeping by any registered adviser

[708] *See, e.g.,* DTCC Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 4; State Street Letter, *supra* note 16, at 5; MFA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 2; AGC April Letter, *supra* note 16, at 4; CCMA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 8; IAA April Letter, *supra* note 16, at 2; IIAC Letter, *supra* note 16, at 2; ASA Letter, *supra* note 16, at 1–2; OCC Letter, *supra* note 16, at 3; STA Letter, *supra* note 16, at 2.

[709] *See supra* Part VII.A.

[710] *Id.*

[711] *See* 44 U.S.C. 3501 *et seq.*

[712] The T+1 Proposing Release stated that the Commission intended to include Rule 17Ad–27 in an existing information collection, ''Clearing Agency Standards for Operation and Governance'' (OMB Control No. 3235–0695). The Commission has subsequently determined to request a new OMB Control Number for the collection of information in Rule 17Ad–27.

[713] *See supra* note 712 and accompanying text (providing the title of the information collection and the OMB control number for these rulemakings, ''Shortening the Securities Transaction Settlement Cycle'' (OMB Control No. 3235–0799)).

[714] *See* section 210(b) of the Advisers Act, 15 U.S.C. 80b–10(b).

that is a party to a contract under proposed Rule 15c6–2 while the final rule references more specifically transactions subject to Rule 15c6–2(a), although both concern the same subset of transactions. We estimate that 12,991 advisers, or 86% of the total registered advisers subject to amended Rule 204–2, will facilitate transactions subject to Rule 15c6–2(a) and thus be subject to the amendments.[715] As discussed in the T+1 Proposing Release, the Commission stated that based on staff experience, it believed that many advisers already have processes in place to make and keep records of confirmations received, and allocations and affirmations sent as part of their customary and usual business practices, though recognizing that some small and mid-sized advisers do not currently retain these records, and some advisers still maintain certain records in paper and/or communicate by telephone.[716] Paper records are less likely to be date and time stamped, and those communicated by telephone are not date or time-stamped at all, unless a memorial of the communication is retained). The Commission also stated that it believed many such records are electronically maintained, and are sent or received electronically, in which case such documents were already date and time stamped in many instances.[717]

Some commenters discussed aspects of the burden estimates for the proposed amendments to Rule 204–2. One commenter stated that the Commission has underestimated the time and cost burdens for implementing the proposed recordkeeping requirements but did not provide specific estimates.[718] As one basis for that statement, the commenter explained that most investment advisers use third parties to perform or communicate allocations or affirmations, and do not necessarily currently retain the records themselves.[719] This commenter stated that if such advisers were required to retain those records on an ongoing basis, they would likely incur costs associated with directing the third parties to electronically copy the investment adviser on any allocations or affirmations and ensuring that their own systems and infrastructure could adequately accommodate these additional records. The commenter suggested that if advisers could not rely on third parties to meet their recordkeeping obligations, the Commission should update its estimates, while also asking the Commission to review the potential cost savings associated with allowing advisers to use third parties to retain the required records.[720] In this regard, we note that investment advisers may continue to rely on third parties to meet their recordkeeping obligations, including those required by the final amendments to Rule 204–2.[721]

Several comments also addressed timestamping. One suggested that the costs could be higher than we estimated in the proposal,[722] while another stated that timestamps are already included in electronic communications protocols.[723] We agree, consistent with the latter comment, that timestamps are generally included in many electronic communications and many advisers currently send allocations and affirmations electronically.

In a change from the proposal, we estimate that each adviser that will be subject to the new recordkeeping requirements will incur an additional three-hour burden each year, increased from two hours as proposed. We are not amortizing any of the burdens as proposed, because we believe investment advisers that will be subject to the new requirements will incur the same hour burden initially and then annually thereafter.[724]

The Commission estimates that 12,991 registered advisers will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a).[725] This estimate takes into account potential additional burdens associated with the new recordkeeping requirement for advisers that do not currently make and retain these records, but will be required to do so under the final rule. The revised estimates are also designed to address any burdens for advisers that may make and retain such documents, but do not do so electronically and/or do not time and date stamp such documents or otherwise retain the documents in a way that complies with the final rule. In addition, the revised estimates factor in any costs associated with receiving copies of, or having access to, required records that are retained by a custodian or other third-party, offset by cost-savings associated with the adviser's ability to rely on third parties to meet its recordkeeping obligations under the rule. As discussed above, we believe that many advisers already have recordkeeping processes in place to retain the new required records, and may only incur minimal additional burdens to comply with the final recordkeeping requirements. However, some advisers may need to spend more time to modify their recordkeeping systems. Accordingly, the three-hour burden estimate reflects an average across all advisers likely to be subject to the new requirements. Finally, in response to the comment that our staffing cost estimates were too low, we have increased the hours burden to three and the time we estimate the compliance clerk and general clerk will spend on the collection of information, and we updated the wage rates to account for inflation.[726]

In our most recently approved Paperwork Reduction Act submission for Rule 204–2, we estimated for Rule

[715] Based on Form ADV data as of June 2022. *See also infra* note 4 to Table 2.

[716] *See* T+1 Proposing Release, *supra* note 2, at 10494.

[717] *See* T+1 Proposing Release, *supra* note 2, at 10456–57, 10490, 10494.

[718] *See* IAA April Letter, *supra* note 16, at 7.

[719] *Id.* (noting the Commission's estimate in the T+1 Proposing Release that 70 percent of investment adviser trades are affirmed by their custodian is consistent with information received from IAA members, and also noting that advisers may utilize separately managed accounts where trading and allocations are conducted by a third-party investment manager under an agreement with the investment adviser).

[720] *Id.*

[721] *See supra* Part IV.C. As previously noted, we estimate that 70% of trades are affirmed by custodians, which may retain the affirmations on the adviser's behalf.

[722] AIMA Letter, *supra* note 29.

[723] FIX Trading Letter, *supra* note 218.

[724] The T+1 Proposing Release amortized the annual two-hour burden over three years, resulting in an annual internal burden of 0.667 hours per adviser per year.

[725] The Commission is using a different methodology than the proposal in order to simplify the calculation and include more advisers that we estimate will be subject to the new recordkeeping requirement. The final estimate includes one category of 12,991 advisers that will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a). The estimate excludes advisers that only have individuals or high-net-worth individuals as clients in Item 5.D. and do not report participation in any wrap fee program in Item 5.I., and advisers that do not report any regulatory assets under management in Item 5.F. In contrast, the T+1 Proposing Release estimated 11,283 of advisers that are subject to Rule 204–2, would enter a contract with a broker or dealer under proposed Rule 15c6–2 and therefore be subject to the related proposed recordkeeping amendment. The estimate included three categories of advisers that would have had the same burden hours: (1) 220 small and mid-size advisers that have institutional clients that we believed do not maintain the proposed records; (2) 113 advisers that have institutional clients that staff estimated do not send allocations or affirmations; and (3) 7,898 advisers with institutional clients that the staff estimated make institutional trades that are affirmed by custodians and therefore do not maintain the proposed affirmations.

[726] The wage rate estimate takes into account an updated inflation adjustment since the proposal and estimates that the higher paid compliance clerk will spend approximately 50% of the time performing the function instead of 17% as estimated in the T+1 Proposing Release.

204–2 a total annual aggregate hour burden of 2,764,563 hours, and a total annual aggregate internal cost burden of $175,980,426.[727] The estimated additional burdens associated with the final amendments to Rule 204–2, which take into account an increase in annual hour burdens and internal cost burdens due to the comments received and an increase in the internal wage rates due to an updated inflation adjustment reflecting inflation through the end of 2022, are reflected in the table below.

TABLE 2—SUMMARY OF BURDEN ESTIMATES FOR THE FINAL AMENDMENTS TO RULE 204–2

Advisers	Annual internal hour burden [1]	Internal wage rate [2]	Internal time cost per year [3]
12,991 advisers [4]	3 hours per adviser [5] Incremental aggregate burden = 38,973 hours (12,991 advisers × 3 hours = 38,973 hours).	$77.50 per hour	Incremental aggregate internal cost = $3,020,408 ($77.5 × 38,973 hours = $3,020,408).
Currently approved aggregate burden [6]	2,764,563 aggregate hours per year	$175,980,426	
Estimated revised aggregate burden [7]	2,803,536 aggregate hours per year	$179,000,834 [8]	

Notes:

[1] In a change from the Proposing Release, we are not amortizing the initial internal hour burden over a three-year period. Instead, we believe that the estimated internal hour burdens associated with the final amendments will be annual burdens.

[2] As with our estimates relating to the previous amendments to Advisers Act Rule 204–2, the Commission expects that performance of these functions will most likely be allocated between compliance clerks and general clerks. Data from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation through the end of 2022, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these position are $82 and $73, respectively. A blended hourly rate is therefore: ($82 + $73) ÷ 2 = $77.5 per hour.

[3] Under the currently-approved PRA for Rule 204–2, there is no cost burden other than the internal cost of the hour burden described herein, and we believe that the amendments will not result in any external cost burden.

[4] We estimate there were 15,160 total registered advisers as of June 2022 based on Form ADV filings received through the Investment Adviser Registration Depository (IARD) through August 31, 2022. Of these 15,160 advisers, we estimate that 12,991 will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a). We have excluded advisers that only have individuals or high-net-worth individuals as clients in Item 5.D. and do not report participation in any wrap fee program in Item 5.I. We also excluded advisers that do not report any regulatory assets under management in Item 5.F.

[5] We estimate an average of three hours per adviser to update procedures and instruct personnel to make and retain the required records in the advisers' recordkeeping systems, including any such documents it may receive in paper format and does not currently retain, and to actually retain those records for the required retention periods. Because we believe that many advisers already have recordkeeping systems to accommodate these records, which include, at a minimum, spreadsheet formats and email retention systems that have an ability to capture a date and time stamp, such advisers are likely to incur minimal incremental costs associated with the new recordkeeping requirement.

[6] *See supra* note 727.

[7] The new recordkeeping burden will add 38,973 aggregate annual hours, resulting in a revised estimate of 2,803,536 aggregate hours for all registered advisers subject to these amendments to Rule 204–2 (2,764,563 current hours + 38,973 additional hours = 2,803,536 aggregate hours per year). The new recordkeeping burden would also add $3,020,408 in aggregate internal costs, resulting in a revised estimate of $179,000,834 in aggregate internal costs ($175,980,426 current internal costs + $3,020,408 additional internal costs = $179,000,834).

[8] This reflects a reduction in the internal time cost per year that appeared in the T+1 Proposing Release, to account for corrections to the internal time costs calculations as they appeared in the T+1 Proposing Release.

B. Exchange Act Rule 17Ad–27

As discussed in the T+1 Proposing Release, the purpose of the collections under Exchange Act Rule 17Ad–27 is to ensure that CMSPs facilitate the ongoing development of operational and technological improvements associated with the straight-through processing of institutional trades. The collections are mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[728]

Respondents under this rule are the three CMSPs to which the Commission has granted an exemption from registration as a clearing agency, as previously discussed in the T+1 Proposing Release. The Commission also continues to anticipate that one additional entity may seek to become a CMSP in the next three years, and so for purposes of this PRA collection the Commission has assumed four respondents.

As discussed in Part V.C.1, Rule 17Ad–27(a) requires a CMSP to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing. Although the Commission has modified the text of Rule 17Ad–27(a) to provide that such policies and procedures be ''reasonably designed,'' the Commission believes that the initial burden under this portion of the rule is unchanged. As discussed in the T+1 Proposing Release, the Commission continues to estimate that respondent CMSPs would incur an aggregate one-time burden of approximately 56 hours to create such new policies and procedures,[729] and that the aggregate cost of this one time burden would be $27,600.[730]

Rule 17Ad–27 also imposes ongoing burdens on a respondent CMSP as follows: (i) ongoing monitoring and compliance activities with respect to the

[727] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204–2, OMB Report, OMB 3235–0278 (Aug. 2021).

[728] *See, e.g.,* 5 U.S.C. 552 *et seq.* Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[729] This figure was calculated as follows: (Assistant General Counsel for 8 hours + Compliance Attorney for 6 hours) = 14 hours × 4 respondent CMSPs = 56 hours.

[730] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 8 hours = $4,344) + (Compliance Attorney at $426/hour × 6 hours = $2,556) = $6,900 × 4 CMSPs equals $27,600.

written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to the required annual report. As discussed in Part V.C.2, the Commission has modified the final rule to identify specific data elements to be included in the annual report. To accommodate the documentation and reporting of such data as contemplated in final Rule 17Ad–27(b), the Commission has revised its estimates such that the ongoing activities required by Rule 17Ad–27 would now impose an aggregate annual burden on respondent CMSPs of 148 hours,[731] with an internal aggregate cost (or monetized value of the hour burden) of $65,208.[732] The total industry internal cost is estimated to be $92,808.[733]

TABLE 3—SUMMARY OF BURDEN ESTIMATES FOR RULE 17Ad–27 [734]

Name of information collection	Type of burden	Number of respondents	Number of annual responses per respondent	Initial burden per respondent	Annualized initial burden per respondent	Ongoing burden per respondent	Total annual burden per respondent	Total annual industry burden (hours)
17Ad–27	Recordkeeping	4	1	[735] 14	4.67	37	41.67	166.67
Total Aggregate Burden for All Respondents.								166.67

C. Exchange Act Rule 15c6–2

As proposed, Exchange Act Rule 15c6–2 did not create any PRA burdens, so the T+1 Proposing Release did not estimate PRA burdens for the proposed rule. As discussed in Part III.C, the Commission is modifying the proposed rule at adoption to incorporate affirmative recordkeeping obligations, as explained below.

1. Summary and Proposed Use of Information

Rule 15c6–2(a) requires any broker or dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of Rule 15c6–1(a) to either: (1) enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or (2) establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.[736]

Pursuant to Rule 15c6–2(b), to ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, written policies and procedures required by paragraph (a)(2) of this section shall: (1) identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.[737]

The purpose of this information collection is to ensure that the parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer's investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date.[738] This objective, commonly referred to as ''same-day affirmation,'' has been a longstanding goal of the securities industry and one that can help ensure the timely and orderly settlement of securities transactions.[739]

Rule 15c6–2 provides broker-dealers with two compliance alternatives that would create a recordkeeping burden: (i)

[731] This figure was calculated as follows: (Compliance Attorney for 24 hours + Computer Operations Manager for 10 hours) = 34 hours × 4 respondent CMSPs = 136 hours. In the T+1 Proposing Release, the number of hours for a Compliance Attorney was incorrectly stated as ''25 hours'' as opposed to ''24 hours.'' *See* T+1 Proposing Release, *supra* note 2, at 10495 n.433. As discussed previously, *supra* note 671, the Commission estimates that the Inline XBRL requirement will require respondent CMSPs to incur three additional ongoing burden hours to apply and review Inline XBRL tags, as follows: (Compliance Attorney for 3 hours) × 4 CMSPs = 12 hours. Taken together, the total ongoing burden is 148 hours (136 hours + 12 hours = 148 hours).

[732] This figure was calculated as follows: (Compliance Attorney at $426/hour × 24 hours = $10,224) + (Computer Operations Manager at $514/hour × 10 hours = $5,140) = $15,364 × 4 CMSPs = $61,456. The Commission also estimates the costs associated with the three burden hours associated with applying and reviewing Inline XBRL tags are as follows: (Compliance Attorney at $426/hour × 3 hours = $1,278) × 4 CMSPs = $5,112. Taken together, the total amount is $65,208 ($60,096 + $5,112 = $65,208).

[733] This figure was calculated as follows: $27,600 (industry one-time burden) + $65,208 (industry ongoing burden) = $92,808.

[734] The T+1 Proposing Release incorrectly stated the amount for the total annual burden per respondent (91 hours) and the total annual industry burden (364 hours) because the initial burden used to calculate those amounts should have been annualized to 18.67 hours. The estimates have been corrected in Table 3 for this adopting release and reflect the PRA estimates that the Commission provided to OMB for this rulemaking.

[735] In the T+1 Proposing Release, Table 2: *Summary of burden estimates for Rule 17Ad–27* erroneously stated the total industry initial burden of 56 hours instead of the initial burden per entity of 14 hours. *See* T+1 Proposing Release, *supra* note 2, at 10496. The remaining entries in the table in this release have been updated accordingly.

[736] 17 CFR 240.15c6–2(a).

[737] 17 CFR 240.15c6–2(b).

[738] *See supra* Part III.

[739] *See id.; see also* T+1 Proposing Release, *supra* note 2, at 10452–53.

entering into written agreements pursuant to Rule 15c6–2(a)(1) or (ii) establishing, maintaining, and enforcing written policies and procedures pursuant to Rule 15c6–2(a)(2). Based on the comments received regarding the costs and challenges associated with entering into such written agreements under the rule, the Commission believes that broker-dealers are unlikely to enter into new written agreements specifically for the purpose of achieving compliance with Rule 15c6–2(a)(1) if they do not already have written agreements to manage their commercial relationships. Moreover, as discussed in Part III.B.5, a broker-dealer may choose to update existing agreements and commercial arrangements to achieve compliance with Rule 15c6–2(a)(1);[740] however, the Commission believes that broker-dealers are likely to choose to comply with the policies and procedures requirement under Rule 15c6–2(a)(2) if the costs and challenges (*i.e.,* for PRA purposes, the associated hour burdens) associated with updating existing agreement or arrangements would be higher than those associated with the policies and procedures requirement. For purposes of preparing this PRA analysis, the Commission assumes that all respondent broker-dealers will seek to achieve compliance with Rule 15c6–2 by establishing, maintaining, and enforcing policies and procedures consistent with Rule 15c6–2(a)(2).[741]

2. Respondents

As of December 31, 2021, 3,508 broker-dealers were registered with the Commission.[742] Of those, approximately 143 broker-dealers are participants of the DTC,[743] a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as ''clearing brokers'' within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (''DVP'') and receipt-versus-payment (''RVP'') methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is the only clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6–2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (*i.e.,* clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (''FINRA''), the Commission estimates that approximately 268 additional broker-dealers may serve institutional customers.[744] Accordingly, the Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.

3. Total Initial and Annual Reporting Burdens

The extent to which a respondent will be burdened by the proposed collection of information under Rule 15c6–2 will depend on two factors: (1) the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be required to demonstrate compliance with the rule; and (2) the extent to which existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions,[745] and the securities industry considers achieving ''same-day affirmation'' an industry best practice.[746] Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours to create policies and procedures required under the rule,[747] and that the internal cost (or monetized value of the hour burden) of this one-time burden per broker-dealer would be $88,880.[748]

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on respondent broker-dealers of 480 hours,[749] and an internal cost (or monetized value of the hour burden) per broker-dealer of $172,416.[750] The total

[740] The existing requirements of 17 CFR 240.17a–4(b)(7) (''Rule 17a–4(b)(7)'') under the Exchange Act already require a broker or dealer to preserve all written agreements (or copies thereof) entered into by a member, broker or dealer relating to its business as such, including agreements with respect to any account. *See* 17 CFR 240.17a–4(b)(7).

[741] To the extent some broker-dealers choose to update their existing agreements and arrangements to achieve compliance with Rule 15c6–2(a)(1) because the associated costs and challenges (*i.e.,* for PRA purposes, the hour burdens) would be lower than those associated with the policies and procedures requirement, then the actual hour burden for this collection of information requirement in Rule 15c6–2 may be less than the estimated hour burden.

[742] This estimate is derived from FOCUS Report data as of December 31, 2021.

[743] *See* DTCC, DTC Member Directories, *https://www.dtcc.com/client-center/dtc-directories* (last updated Dec. 30, 2022).

[744] Specifically, statistics compiled by FINRA suggest that approximately 256 small firms and 12 medium-sized firms in the ''Trading and Execution'' category perform ''Institutional Brokerage.'' FINRA, 2022 FINRA Industry Snapshot 33, 34 (2022), *https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf.*

[745] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[746] *See* supra Part III.B.1.

[747] This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

[748] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 20 hours = $10,860) + (Compliance Attorney at $426/hour × 120 hours = $51,120) + (Senior Risk Management Specialist at $417/hour × 20 hours = $8,340) + (Risk Management Specialist at $232/hour × 80 hours = $18,560) = $88,880 × 411 respondents = $36,529,680.

[749] This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

[750] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 48 hours = $26,064) + (Compliance Attorney at $426/hour × 192 hours = $81,792) + (Senior Risk Management Specialist at $417/hour × 48 hours = $20,016) + (Risk Management Specialist at $232/hour × 192 hours = $44,544) = $172,416 × 411 respondents = $70,862,976.

industry internal cost is estimated to be approximately $107M.[751]

TABLE 4—SUMMARY OF BURDEN ESTIMATES FOR RULE 15c6–2

Name of information collection	Type of burden	Number of respondents	Number of annual responses per respondent	Initial burden per respondent (hours)	Annualized initial burden per respondent	Ongoing burden per respondent (hours)	Total annual burden per respondent (hours)	Total annual industry burden (hours)
15c6–2	Recordkeeping	411	1	240	80	480	560	230,160
Total Aggregate Burden for All Respondents.								230,160

4. Collection of Information Is Mandatory

Where applicable, the collection of information pursuant to Rule 15c6–2 is mandatory.

5. Confidentiality

Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6–2, a broker-dealer can request confidential treatment of the information.[752] If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.[753]

6. Retention Period

Pursuant to Exchange Act Rule 17a–4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.[754]

Pursuant to 17 CFR 240.17a–4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.[755]

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[756] Section 603(a) of the Administrative Procedure Act,[757] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [758] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[759] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in conjunction with the T+1 Proposing Release, published in February 2022. The T+1 Proposing Release included, and solicited comment on, the IRFA.

A. Exchange Act Rules 15c6–1 and 15c6–2

Below is the Final Regulatory Flexibility Analysis for the amendments to Rule 15c6–1 and new Rule 15c6–2, prepared in accordance with the RFA.

1. Need for the Rules

The Commission is adopting the amendments to Rule 15c6–1 to shorten the standard settlement cycle from two days to one day, offering market participants benefits that include reduced exposure to credit, market, and liquidity risk, as well as related reductions to overall systemic risk. These benefits have been previously discussed in detail in Parts II and VIII above.

The Commission is adopting Rule 15c6–2 to establish requirements that facilitate the completion of allocations, confirmations, and affirmations by the end of the trade date, helping to facilitate the settlement of institutional transactions in a T+1 or shorter standard settlement cycle by promoting the timely and orderly transmission of trade data necessary to achieve settlement. In addition, Rule 15c6–2 can foster continued improvements in institutional trade processing, which should in turn also further promote accuracy and efficiency, reduce the potential for settlement fails, and more generally, reduce the potential for operational risk. These benefits have been previously discussed in detail in Parts III and VIII above.

The amendments to Rule 15c6–1 and new Rule 15c6–2 each advance the objectives of section 15(c)(6), 17A, and 23(a) of the Exchange Act.[760]

2. Summary of Significant Issues Raised by Public Comment

As noted above in Part X.A, the T+1 Proposing Release solicited comment on the IRFA. Although the Commission received no comments specifically concerning the IRFA, multiple commenters discussed the costs and burdens for broker-dealers associated with Rules 15c6–1 and 15c6–2. These comments have been discussed in detail in Parts II and III, and the Commission has modified the proposed rules at adoption to address these comments and, in part, to minimize the effect on small entities, as discussed further in Part X.A.5 below.

[751] This figure was calculated as follows: $36,529,680 (industry one-time burden) + $70,862,976 (industry ongoing burden) = $107,392,656.

[752] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's website at *http://www.sec.gov/foia/howfo2.htm#privacy*.

[753] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[754] 17 CFR 240.17a–4(b)(7).

[755] 17 CFR 240.17a–4(e)(7).

[756] *See* 5 U.S.C. 601 *et seq.*

[757] 5 U.S.C. 603(a).

[758] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10.

[759] *See* 5 U.S.C. 605(b).

[760] *See* 15 U.S.C. 78*o*(c)(6); 15 U.S.C. 78q–1; 15 U.S.C. 78w(a).

3. Description and Estimate of Small Entities

Paragraph (c) of Rule 0–10 under the Exchange Act provides that, for purposes of Commission rulemaking in accordance with the provisions of the RFA, when used with reference to a broker or dealer, the Commission has defined the term ''small entity'' to mean a broker or dealer: (1) with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[761] or if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[762]

The amendments to Rule 15c6–1 and new Rule 15c6–2 each establish requirements that apply to broker-dealers, including those that are small entities. Based on FOCUS Report data, the Commission estimates that, as of June 30, 2022, approximately 1,393 broker-dealers might be deemed small entities for purposes of this analysis.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Rule 15c6–1 do not impose any new reporting or recordkeeping requirements on broker-dealers that are small entities. However, the amendments to Rule 15c6–1 may impact certain broker-dealers, including those that are small entities, to the extent that broker-dealers may need to make changes to their business operations and incur certain costs in order to operate in a T+1 environment.

For example, implementing a T+1 standard settlement cycle may require broker-dealers, including those that are small entities, to make changes to their business practices, as well as to their computer systems, and/or to deploy new technology solutions. Implementation of these changes may require broker-dealers to incur new or increased costs, which may vary based on the business model of individual broker-dealers as well as other factors.[763]

Additionally, implementing a T+1 standard settlement cycle may result in an increase in costs to certain broker-dealers who finance the purchase of customer securities until the broker-dealer receives payment from its customers. To pay for securities purchases, many customers liquidate other securities or money fund balances held for them by their broker-dealers in consolidated accounts such as cash management accounts. However, some broker-dealers may elect to finance the purchase of customer securities until the broker-dealer receives payment from its customers for those customers that do not choose to liquidate other securities or have a sufficient money fund balance prior to trade execution to pay for securities purchases. Broker-dealers that elect to finance the purchase of customer securities may incur an increase in costs in a T+1 environment resulting from settlement occurring one day earlier unless the broker-dealer can expedite customer payments.

Comments directed to the burdens and costs associated with Rule 15c6–1 have been discussed in Part II.

As modified at adoption and as previously discussed in detail in Part III, Rule 15c6–2 imposes recordkeeping requirements on broker-dealers that are small entities because it includes a requirement to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion on trade of trade allocations, confirmations, and affirmations for their institutional trades. In addition, the rule may impact certain broker-dealers, including those that are small entities, to the extent that broker-dealers may need to make changes to their business operations and incur certain costs in order to implement such policies and procedures. These efforts may require broker-dealers, including those that are small entities, to make changes to their business practices, as well as to their computer systems, and/or to deploy new technology solutions. Implementation of these changes may require broker-dealers to incur new or increased costs, which may vary based on the business model of individual broker-dealers as well as other factors.

Comments directed to the burdens and costs associated with Rule 15c6–2 have been discussed in Part III.

5. Description of Commission Actions To Minimize Effect on Small Entities

As discussed in the IRFA, the Commission considered alternatives to the amendments to Rule 15c6–1 that would accomplish the stated objectives of the amendment without disproportionately burdening broker-dealers that are small entities, including: differing compliance requirements or timetables; clarifying, consolidating, or simplifying the compliance requirements; using performance rather than design standards; or providing an exemption for certain or all broker-dealers that are small entities. The purpose of Rule 15c6–1 is to establish a standard settlement cycle for broker-dealer transactions. Alternatives, such as different compliance requirements or timetables, or exemptions, for Rule 15c6–1, or any part thereof, for small entities would undermine the purpose of establishing a standard settlement cycle. For example, allowing small entities to settle at a time later than T+1 could create a two-tiered market that could work to the detriment of small entities whose order flow would not coincide with that of other firms operating on a T+1 settlement cycle. Additionally, the Commission believes that establishing a single timetable (*i.e.,* compliance date) for all broker-dealers, including small entities, to comply with the amendment is necessary to ensure that the transition to a T+1 standard settlement cycle takes place in an orderly manner that minimizes undue disruptions in the securities markets.[764] With respect to using performance rather than design standards, the Commission used performance standards to the extent appropriate under the statute.[765] In addition, under the amendment, broker-dealers have the flexibility to tailor their systems and processes, and generally to choose how, to comply with the rule.

The Commission also considered alternatives to Rule 15c6–2 and, in response to the comments received, has modified the rule at adoption to provide a policies and procedures alternative, as requested by the commenters, to reduce the burden and cost of the rule and to provide greater flexibility to broker-dealers to tailor their systems and

[761] 17 CFR 240.17a–5(c).

[762] 17 CFR 240.0–10(d).

[763] *See supra* Part VIII.C.2 (further discussing how large customers of third-party providers have market power that may enable them to avoid internalizing costs, while small customers in a weaker negotiating position relative to their service providers may bear the bulk of these costs).

[764] For example, because broker-dealers do not always know the identity of their counterparty when they enter a transaction, providing broker-dealers that are small entities with an exemption from the standard settlement cycle would likely create substantial confusion over when a transaction will settle.

[765] For example, for firm commitment offerings, the Commission modified the proposed rule at adoption to incorporate a T+2 rather than a T+1 standard, as discussed above in Part II.C.4. More generally, small entities retain the option under paragraph (d) to agree with their counterparty in advance of a transaction subject to Rule 15c6–1(a) to use a settlement cycle other than T+1. *See supra* Part II.C.5.

processes, and generally to choose how, to comply with the rule. The modifications to the rule made in response to the comments received have been discussed in detail in Part III.C.

B. Amendment to Advisers Act Rule 204–2

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 4(a) of the RFA relating to the final amendments to Rule 204–2 under the Advisers Act.

1. Need for the Rule Amendment

As discussed above, we are adopting amendments to 17 CFR 275.206(4)–2 (''Rule 206(4)–2'') to require all registered investment advisers to make and keep certain records for any transaction that is subject to the requirements of Rule 15c6–2(a). Those records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. The reasons for, and objectives of, the final amendments are discussed in more detail in Parts I and IV above. The burdens of these requirements on small advisers are discussed in Parts VIII and IX, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in Part IX.

2. Summary of Significant Issues Raised by Public Comment

In developing our approach to Rule 204–2, we considered the potential impact on small entities that would be subject to the final amendments. In the 2022 Proposing Release, we requested comment on the matters discussed in the IRFA, including the proposed amendments to Rule 204–2, as well as the potential impacts discussed in this analysis, and whether the proposal could have an effect on small entities that has not been considered. One commenter, concerned that the Commission had underestimated the time and cost burdens for implementing the proposed recordkeeping requirements, observed that if investment advisers that currently rely on third parties to meet their recordkeeping obligations were no longer be able to do so, and would instead have to obtain and maintain such records on an ongoing basis, advisers, ''especially smaller and mid-sized investment advisers,'' would incur costs to update their infrastructure to obtain and maintain the proposed trading records.[766] This commenter recommended that the Commission update its estimates, and specifically requested ''that the Commission review the potential cost savings from allowing investment advisers to utilize third parties to maintain required records under the Proposal.'' [767]

As discussed above, advisers may continue to rely on third parties to comply with their recordkeeping obligations, consistent with current practice, and we do not believe that the final amendments to Rule 204–2 will require most advisers to make significant changes to their current recordkeeping practices. We recognize that the amendments to final Rule 204–2 will require registered investment advisers to make and keep records of confirmations received, and any allocations and each affirmation sent or received for securities transactions that are subject to the requirements of Rule 15c6–2(a). Some advisers—including small advisers—may need to update their processes to retain and date stamp the specified records. After consideration of the comments received, we are revising our estimates to increase the number of small entities affected by the new rule and amendments, update the estimated wage rates, and increase the hourly burdens associated with the amendments to Rule 204–2.

3. Description and Estimate of Small Entities

The final amendments will affect certain investment advisers registered with the Commission, including some small entities. Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[768]

As discussed in Part IX.A, the Commission estimates that as of June 2022, 12,991 registered investment advisers will be subject to the final amendments to Rule 204–2 under the Advisers Act. Based on IARD data, we estimate that, as of June 2022, approximately 522 SEC-registered advisers are small entities (''small advisers'').[769] Of these, the Commission anticipates that 33, or 6% of small advisers registered with the Commission, would be subject to the final amendment under the Advisers Act.[770]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments to Rule 204–2 will require all registered investment advisers to maintain make and keep certain records with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). These records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received. Each of these records will be required to be kept in the same manner, and for the same period of time, as other books and records required to be kept under Rule 204–2(a).[771] The PRA for Rule 204–2 discusses the type of professional skills necessary to conduct such activities. The Commission believes that no Federal rules duplicate, overlap or conflict with the final amendments to Rule 204–2. As discussed above, there are approximately 33 small advisers currently registered with us that we believe will impacted by the rule. As discussed in our Paperwork Reduction Act Analysis, the amendments to Rule

[766] IAA April Letter, *supra* note 16, at 7.

[767] *Id.*

[768] Advisers Act Rule 0–7(a).

[769] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV as of June 2022, incorporating Form ADV filings received through IARD through August 31, 2022. Only SEC-registered investment advisers with regulatory assets under management (''RAUM'') of less than $25 million, as indicated in Form ADV Item 5.F.(2)(c) are required to respond to Form ADV Item 12. For purposes of this analysis, a registered investment adviser is classified as a ''small business'' or ''small organization'' if they respond ''No'' to Form ADV Item 12.A., 12.B.(1), 12.B.(2), 12.C.(1), and 12.C.(2). These responses indicate that the registered investment adviser had RAUM of less than $25 million, did not have total assets of $5 million or more on the last day of the most recent fiscal year; and does not control, is not controlled by, and is not under common control with another investment adviser that has RAUM of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year, consistent with the definition of a small entity under the Advisers Act for purposes of the RFA.

[770] Based on data from Form ADV as of June 2022. This figure represents small registered investment advisers that: (i) report clients that are only individuals or high net worth individuals in response to Item 5.D, and (ii) do not report participating in wrap fee programs in response to Item 5.I, and (iii) have regulatory assets under management greater than zero in response to Item 5.D.

[771] *See, e.g.,* Advisers Act Rule 204–2(e)–(g).

204–2 under the Advisers Act will increase the annual burden by approximately three hours per adviser, or 99 incremental aggregate hours for small advisers. We therefore believe the annual monetized aggregate cost to small advisers associated with our amendments will be 7,673.[772]

5. Description of Commission Actions To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. The Commission considered alternatives to the final amendments to Rule 204–2 that would accomplish the stated objectives without disproportionately burdening investment advisers that are small entities, including: (1) differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating or simplifying the compliance and reporting requirements; (3) using performance rather than design standards; or (4) providing an exemption from coverage of all or part of the final rule amendments for investment advisers that are small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance, recordkeeping, or reporting requirements or timetables for small advisers, or exempting small advisers from the amended rule, or any part thereof, would be inappropriate under these circumstances. The protections of the Advisers Act are intended to apply equally to clients of both large and small firms and small entities currently follow the same requirements that large entities do when making and keeping books and records; therefore, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the final amendments to Rule 204–2. While the Commission estimates that 33 small advisers will incur costs to comply with the amendments, the Commission believes that the initial burden on small advisers of retaining the required records will not be large. As discussed above, the Commission believes that many advisers, including small advisers, already have processes in place to retain records of confirmations received, and allocations and affirmations sent and received as part of their customary and usual business practices, though some advisers do not currently retain these records and some still maintain certain records in paper and/or communicate by telephone. The Commission also believes many such records are electronically maintained, and are sent or received electronically, in which case such documents are already date and time stamped in many instances. As a result, the Commission does not believe the two hour additional burden of complying with the final amendments would warrant establishing a different timetable for compliance for small advisers. In addition, as discussed above, our staff would use the information that advisers would maintain to help prepare for examinations of investment advisers and verify that an adviser has completed the steps necessary to complete settlement in a timely manner in accordance with final Rule 15c6–1(a). Establishing different conditions for large and small advisers would negate these benefits.

Similarly, we do not believe it would be appropriate to exempt small advisers from the final amendments. We believe that 33 small advisers will be subject to amended Rule 204–2 and thus make and keep records of each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received. This approach is designed to support the Commission's policy objectives in achieving same-day affirmation by helping to ensure that trades with advisers timely settle on T+1. In addition, this requirement will help advisers research and remediate issues that may cause delays in the issuance of allocations and affirmations and improve their timeliness overall. Requiring these records also will help advisers establish that they have timely met contractual obligations, if applicable, or any requirements broker-dealers impose in light of their compliance obligations under final Rule 15c6–2(a).

Regarding the second alternative, the Commission believes the final amendments are clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. Amended Rule 204–2 states the types of communications—confirmations, any allocations, and affirmations—that advisers must retain in their records, and that each allocation and affirmation must be date and time stamped. We believe that by clearly listing these types of communications as required records, advisers will not need to parse whether, and if so which, current requirement under Rule 204–2 captures these post-trade communications. Further, the requirement to date and time stamp each allocation and affirmation sent to a broker or dealer is clear and consistent with many advisers' current practices of date and time stamping these records.

Regarding the third alternative, the final amendments to Rule 204–2 use a combination of performance and design standards. The final Rule 204–2 amendments are narrowly tailored to correspond to the final rules and rule amendments under the Exchange Act. Although the amendments provide some flexibility to advisers in such practices as date- and time-stamping, we generally find that it is more useful to our regulatory and examination program, and therefore for our ability to protect investors, for advisers to retain books and records in a uniform and quantifiable manner.

C. Exchange Act Rule 17Ad–27

Exchange Act Rule 17Ad–27 applies to clearing agencies that are CMSPs. For the purposes of Commission rulemaking, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[773]

As discussed in the T+1 Proposing Release, and based on the Commission's existing information about the CMSPs that would be subject to Rule 17Ad–27, the Commission continues to believe that all such CMSPs would not fall within the definition of a small entity described above.[774] While other CMSPs may emerge and seek to register as clearing agencies or obtain exemptions from registration as a clearing agency with the Commission, the Commission does not believe that any such entities would be ''small entities'' as defined in 17 CFR 240.0–10(d). Accordingly, the Commission believes that any such CMSP would exceed the thresholds for

[772] Calculated as follows: (3 hours × 33 small advisers) × $77.5 per burden hour = $7,673.

[773] *See* 17 CFR 240.0–10(d).

[774] DTCC ITP Matching is a subsidiary of DTCC, and in 2020, DTCC processed $2.329 quadrillion in financial transactions. DTCC, 2020 Annual Report. As of December 1, 2021, SS&C Technologies Holdings, Inc. (NASDAQ: SSNC) had a market capitalization of $19.35 billion. Bloomberg STP LLC is a wholly-owned by Bloomberg L.P., a global business and financial information and news company.

''small entities'' set forth in in 17 CFR 240.0–10.

The Commission received no comments regarding its analysis for Rule 17Ad–27 in the T+1 Proposing Release. For the reasons described above, the Commission certifies that Rule 17Ad–27 will not have a significant economic impact on a substantial number of small entities.

XI. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[775] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statutory Authority

The Commission is adopting amendments to Regulation S–T and Rule 15c6–1 and adopting new Rules 15c6–2 and 17Ad–27 under the Commission's rulemaking authority set forth in sections 15(c)(6), 17A, 23(a), and 35A of the Exchange Act [15 U.S.C. 78o(c)(6), 78q–1, 78w(a), and 78*ll,* respectively]. The Commission is adopting amendments to Rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11].

List of Subjects in 17 CFR Parts 232, 240, and 275

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.101 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(1)(xxix);

■ b. Removing the period at the end of paragraph (a)(1)(xxx) and adding ''; and'' in its place; and

■ c. Adding paragraph (a)(1)(xxxi).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxxi) Reports filed pursuant to § 240.17Ad–27 of this chapter (Rule 17Ad–27 under the Exchange Act).

* * * * *

■ 3. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2), (a)(3)(i) introductory text, (a)(3)(ii), (a)(4), and (b)(1) introductory text;

■ b. Adding paragraph (b)(5); and

■ c. Revising Note 1 to § 232.405.

The addition and revisions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction C.3.(g) of Form N1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as

[775] 5 U.S.C. 801 *et seq.*

defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(5) If the electronic filer is a clearing agency that provides a central matching service, an Interactive Data File must consist only of a complete set of information for all corresponding data in the Related Official Filing, no more and no less, as follows:

(i) The information provided pursuant to Rule 17Ad–27 under the Exchange Act.

(ii) [Reserved]

* * * * *

Note 1 to § 232.405: Item 601(b)(101) of Regulation S–K specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 (Form S–1), 239.13 (Form S–3), 239.25 (Form S–4),239.18 (Form S–11), 239.31 (Form F–1), 239.33 (Form F–3), 239.34 (Form F–4), 249.310 (Form 10–K), 249.308a (Form 10–Q), and 249.308 of this chapter (Form 8–K). General Instruction F of Form 11–K (§ 249.311 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter) and Paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 of this chapter (Form 6–K). Rule 17Ad–27(d) under the Exchange Act specifies the circumstances under which an Interactive Data File must be submitted with respect the reports required under Rule 17Ad–27. Note D.5 of Schedule 14A (§ 240.14a–101 of this chapter) and Item 1 of Schedule 14C (§ 240.14c–101 of this chapter) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 5. Revise § 240.15c6–1 to read as follows:

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the first business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraph (a) of this section shall not apply to:

(1) Contracts for the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) Security-based swaps; or

(3) Contracts for the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either

unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern Time (ET) on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

■ 6. Add § 240.15c6–2 to read as follows:

§ 240.15c6–2 Same-day allocation, confirmation, and affirmation.

(a) Any broker or dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6–1(a) shall:

(1) Enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or

(2) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

(b) To ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, the reasonably designed written policies and procedures required by paragraph (a)(2) of this section shall:

(1) Identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction;

(2) Set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction;

(3) Describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date;

(4) Describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation; and

(5) Measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

■ 7. Add § 240.17Ad–27 to read as follows:

§ 240.17Ad–27 Straight-through processing by clearing agencies that provide a central matching service.

(a) A clearing agency that provides a central matching service must establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing of securities transactions at the clearing agency.

(b) A clearing agency that provides a central matching service must submit to the Commission every twelve months a report that includes the following:

(1) A summary of the clearing agency's policies and procedures required under paragraph (a) of this section, current as of the last day of the twelve-month period covered by the report required under paragraph (b) of this section;

(2) A qualitative description of the clearing agency's progress in facilitating straight-through processing during the twelve-month period covered by the report required under paragraph (b) of this section;

(3) A quantitative presentation of data that includes:

(i) The total number of trades submitted to the clearing agency for processing;

(ii) The total number of allocations submitted to the clearing agency;

(iii) The total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by a user;

(iv) The percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the relevant timeframe in which the affirmation is processed on trade date;

(v) The percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and

(vi) Metrics concerning the use of manual and automated processes by the clearing agency's users with respect to its services that may be used to assess progress in facilitating straight-through processing.

(4) Each of the data sets required under paragraph (b)(3) of this section shall be:

(i) Organized on a month-by-month basis, beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of this section;

(ii) Separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency;

(iii) Separated, as appropriate, by asset class;

(iv) Separated by type of user; and

(v) Presented on an anonymized and aggregated basis.

(5) A qualitative description of the actions the clearing agency intends to take to further facilitate straight-through processing of securities transactions at the clearing agency during the twelve-month period that follows the period covered by the report required under paragraph (b) of this section.

(c) Each report required under paragraph (b) of this section must be filed within 60 days of the end of the twelve-month period covered by the report required under paragraph (b) of this section, and the twelve-month period covered by each report shall commence on January 1 of the calendar year.

(d) The report required under paragraph (b) of this section must be

filed electronically on EDGAR and must be provided in an Interactive Data File in accordance with § 232.405 of this chapter (Rule 405 of Regulation S–T) and the EDGAR Filer Manual.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 8. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 9. Amend § 275.204–2 by revising paragraph (a)(7)(iii) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(7) * * *

(iii) The placing or execution of any order to purchase or sell any security; and, for any transaction that is subject to the requirements of § 240.15c6–2(a) of this chapter, each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received;

* * * * *

By the Commission.

Dated: February 15, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–03566 Filed 3–3–23; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0794; FRL–6716.2–02–OAR]

RIN 2060–AV12

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: After consideration of public comments, the EPA is revoking a May 22, 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired electric utility steam generating units (EGUs) under Clean Air Act (CAA) section 112, and concluding, as it did in its April 25, 2016 finding, that it remains appropriate and necessary to regulate hazardous air pollutant (HAP) emissions from EGUs after considering cost.

DATES: This final agency action is effective March 6, 2023.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2018–0794. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; and email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is revoking a May 22, 2020 (85 FR 31286) finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112 (2020 Final Action), and concluding, as it did in the EPA's April 25, 2016 finding (81 FR 24420), that it remains appropriate and necessary to regulate HAP emissions from EGUs after considering cost. The 2016 finding was made in response to the U.S. Supreme Court's 2015 *Michigan* v. *EPA* decision, where the Court held that the EPA had erred by not taking cost into consideration when taking action on February 16, 2012 (77 FR 9304), to affirm a 2000 EPA determination that it was appropriate and necessary to regulate HAP emissions from EGUs. In the same 2012 action, the EPA also promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for coal- and oil-fired EGUs, commonly known as the Mercury and Air Toxics Standards or MATS. The EPA is taking this action after a review of the public comments on our proposed revocation of the 2020 Final Action and our conclusion that it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112 (2022 Proposal), based, in part, on ''screening-level'' analyses contained in the 2021 Risk Technical Support Document (TSD)[1] and a reassessment of the actual costs of MATS implementation in the Cost TSD.[2] See 87 FR 7624 (February 9, 2022). A summary of the public comments and the EPA's responses to the comments, and the TSDs are available in the docket for this action, Docket ID No. EPA–HQ–OAR–2018–0794.[3]

Based on a re-evaluation of the administrative record and the statute, and after considering public comments, the EPA concludes that the framework applied in the May 22, 2020 finding was ill-suited to assessing and comparing the full range of advantages and disadvantages, and after applying a more suitable framework, the 2020 determination is revoked. Additionally, the EPA is reaffirming that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs after weighing the volume of pollution that would be reduced through regulation, the public health risks and harms posed by these emissions, the impacts of this pollution on particularly exposed and sensitive populations, the availability of effective controls, and the costs of reducing this harmful pollution, including the effects of control costs on the electricity generation industry and its ability to provide reliable and affordable electricity.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ARP Acid Rain Program
BCA benefit-cost analysis
CAA Clean Air Act
CAAA Clean Air Act Amendments of 1990
CAMR Clean Air Mercury Rule
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulations
C–R concentration response
DSI dry sorbent injection
EGU electric utility steam generating unit
EIA Energy Information Administration
EJ environmental justice
EPA Environmental Protection Agency
ESP electrostatic precipitator
FGD flue gas desulfurization
FR Federal Register
HAP hazardous air pollutant(s)
HCl hydrogen chloride
HF hydrogen fluoride
IHD ischemic heart disease
IPM Integrated Planning Model
IRIS Integrated Risk Information System
MACT maximum achievable control technology
MATS Mercury and Air Toxics Standards
MI myocardial infarction

[1] *National-Scale Mercury Risk Estimates for Cardiovascular and Neurodevelopmental Outcomes for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking.* Available in the rulemaking docket, Docket ID No. EPA–HQ–OAR–2018–0794–4605.

[2] *Supplemental Data and Analysis for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking.* Available in the rulemaking docket, Docket ID No. EPA–HQ–OAR–2018–0794–4586.

[3] As explained in a memorandum to the docket, the docket for this action includes the documents and information, in whatever form, in Docket ID Nos. EPA–HQ–OAR–2009–0234 (National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units), EPA–HQ–OAR–2002–0056 (National Emission Standards for Hazardous Air Pollutants for Utility Air Toxics; Clean Air Mercury Rule (CAMR)), and Legacy Docket ID No. A–92–55 (Electric Utility Hazardous Air Pollutant Emission Study). See memorandum titled *Incorporation by reference of Docket Number EPA–HQ–OAR–2009–0234, Docket Number EPA–HQ–OAR–2002–0056, and Docket Number A–92–55 into Docket Number EPA–HQ–OAR–2018–0794* (Docket ID Item No. EPA–HQ–OAR–2018–0794–0005).

MW megawatt
NAS National Academy of Sciences
NESHAP national emission standards for hazardous air pollutants
NHANES National Health and Nutrition Examination Survey
OMB Office of Management and Budget
PM particulate matter
RfD reference dose
RIA regulatory impact analysis
RTR residual risk and technology review
SCR selective catalytic reduction
SO_2 sulfur dioxide
the Court U.S. Supreme Court
the court D.C. Circuit Court
TSD technical support document
tpy tons per year

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Executive Summary

On January 20, 2021, the President signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (86 FR 7037, January 25, 2021). The Executive order, among other things, instructed the EPA to review the 2020 final action titled ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review'' (85 FR 31286; May 22, 2020) (2020 Final Action) and to consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. Consistent with the Executive order, the EPA has undertaken a careful review of the 2020 Final Action, in which the EPA reconsidered its April 25, 2016 supplemental finding (81 FR 24420) (2016 Supplemental Finding). Based on that review, on February 9, 2022, the EPA issued a proposed action finding that the decisional framework for making the appropriate and necessary determination under CAA section 112(n)(1)(A) that was applied in the 2020 Final Action was unsuitable because it failed to adequately account for statutorily relevant factors (87 FR 7624). The EPA proposed to revoke the 2020 Final Action's determination that it is not appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under section 112 of the CAA and to reaffirm our earlier determinations—made in 2000 (65 FR 79825; December 20, 2000) (2000 Determination), 2012 (77 FR 9304; February 16, 2012) (2012 MATS Final Rule), and 2016—that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the CAA. After considering the public comments on the 2022 Proposal, the EPA is finalizing its revocation of the 2020 Final Action and its reaffirmation of the earlier determinations that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the CAA.

In this action, we conclude that the methodology we applied in 2020 is ill-suited to the appropriate and necessary determination because, among other reasons, it did not give adequate weight to the significant volume of HAP emissions from EGUs and the attendant risks remaining after imposition of the other requirements of the CAA, which includes risks of many adverse health and environmental effects of EGU HAP emissions that currently cannot be quantified or monetized. We therefore revoke the 2020 Final Action.

We further conclude, once again, that it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. We come to this conclusion by first examining the advantages of regulation, including new information on the risks posed by EGU HAP emissions. We then examine the disadvantages of regulation, including both the costs of compliance (which we explain we significantly overestimated in 2012) and how those costs affect the industry and the public. We then weigh these advantages and disadvantages to reach the conclusion that it is appropriate and necessary to regulate, using two separate methodologies.

Our preferred methodology is to consider *all* of the impacts of the regulation using a totality-of the-circumstances approach rooted in the *Michigan* court's direction to ''pay[] attention to the advantages *and* disadvantages of [our] decision[].'' 576 U.S. at 753; see *id.* at 752 (''In particular, 'appropriate' is 'the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors.''). To help determine the relevant factors to weigh, we look to CAA section 112(n)(1)(A), the other provisions of CAA section 112(n)(1), and to the statutory design of CAA section 112.

Initially, we consider the human health advantages of reducing HAP emissions from EGUs because, in CAA section 112(n)(1)(A), Congress directed the EPA to make the appropriate and necessary determination after considering the results of a ''study of the hazards to public health reasonably anticipated to occur as a result of [HAP] emissions'' from EGUs. See CAA section 112(n)(1)(A). We consider all of the advantages of reducing emissions of HAP (*i.e.,* the risks posed by HAP) regardless of whether those advantages can currently be quantified or monetized in a way that allows the benefits of such action to be directly compared to the costs of reducing those emissions. Consistent with CAA section 112(n)(1)(B)'s direction to examine the rate and mass of mercury emissions, and the design of CAA section 112, which requires swift reduction of the volume of HAP emissions from stationary

sources based on the risk such emissions pose, we conclude that we should place substantial weight on reducing the large volume of HAP emissions from EGUs, thereby reducing the risk of grave harms that can occur as a result of exposure to HAP. Also consistent with the statutory design of CAA section 112, in considering the advantages of HAP reductions, we consider the distribution of risk reductions, and the statute's clear goal in CAA section 112(n)(1)(C) and other provisions of CAA section 112 to protect the most exposed and susceptible populations, such as developing fetuses and communities that are reliant on local fish for their survival. We think it is highly relevant that, while EGUs generate power for all, and EGU HAP emissions pose risks to anyone exposed to such HAP, a smaller set of the population who live near EGUs face a disproportionate risk of being significantly harmed by toxic pollution. Finally, we also consider the identified risks to the environment posed by mercury and acid-gas HAP, consistent with CAA section 112(n)(1)(B) and the general goal of CAA section 112 to reduce risks posed by HAP to the environment.

We next weigh those advantages against the disadvantages of regulation, principally in the form of the costs incurred to control HAP before they are emitted into the environment. In evaluating the disadvantages of MATS, we begin with the costs to the power industry of complying with MATS. This assessment uses a sector-level (or system-level) accounting perspective to estimate the cost of MATS, looking beyond just pollution control costs for directly affected EGUs to include incremental costs associated with changes in fuel supply, construction of new capacity, and costs to non-MATS units that were also projected to adjust operating decisions as the power system adjusted to meet MATS requirements. Consistent with the statutory design, we consider those costs comprehensively, examining them in the context of the effect of those expenditures on the economics of power generation more broadly, the reliability of electricity, the cost of electricity to consumers, and employment effects. These metrics are relevant to our weighing exercise because they give us a more complete picture of the disadvantages to producers and consumers of electricity imposed by this regulation and because our conclusion might change depending on how this burden affects the ability of the industry to provide reliable, affordable electricity. These metrics are relevant measures for evaluating costs to the utility sector in part because they are the types of metrics considered by the owners and operators of EGUs themselves. See 81 FR 24428 (April 25, 2016).

As explained in detail in this final action, after weighing the risks posed by HAP emissions from EGUs against the costs of reducing that pollution on the industry and society as a whole, we conclude that it is appropriate to regulate those emissions to protect against adverse health and environmental impacts posed by exposure to HAP emitted by coal- and oil-fired EGUs. We note it is particularly important to regulate because of the risks of adverse health impacts on the populations most vulnerable to such risks. We find that this is true whether we are looking at the information available as of the time of the 2012 threshold finding (as reflected in the rulemaking record for the 2016 Supplemental Finding) or as of the time of the updated record in 2022, in which we quantify additional risks posed by HAP emissions from EGUs and determine, based on newer post-MATS implementation analyses, that the actual cost of complying with MATS was likely significantly less than the EPA's projected estimate in the 2011 Regulatory Impacts Analysis (2011 RIA).[4] We find the actual cost of complying with MATS was likely significantly less than the EPA's projected estimate in the 2011 RIA primarily because fewer pollution controls were installed than projected, and the controls that were used were less expensive than projected.

We conclude that regulation is appropriate under our preferred totality-of-the-circumstances approach when we consider the advantages and disadvantages associated with reducing HAP emissions alone, even when excluding consideration of the many advantages arising from reductions in non-HAP emissions which occur when reducing HAP emissions. However, a true examination of all of the ''advantages *and* disadvantages of [our] decision[],'' 576 U.S. at 753 (emphasis in original), would include such non-HAP beneficial impacts. Therefore, while we would find MATS regulation appropriate and necessary when focusing solely on HAP, in this rulemaking, we also considered the advantages associated with non-HAP emission reductions that result from the application of HAP controls as part of our totality-of-the-circumstances approach. In the 2012 MATS Final Rule, our projections found that regulating EGUs for HAP would result in substantial health benefits from coincidental reductions in ambient concentrations of particulate matter (PM). We also projected that regulating EGUs for HAP would similarly result in an improvement in ambient concentrations of ozone. While we reach the conclusion that regulating HAP emissions from coal- and oil-fired EGUs is appropriate even absent consideration of these additional benefits, adding these advantages to the weighing inquiry provides further support for our conclusion that the advantages of regulation outweigh the disadvantages.

We recognize, as we did in 2016, that our preferred, totality-of-the-circumstances approach to making the appropriate and necessary determination is an exercise of judgment, and that ''[r]easonable people, and different decision-makers, can arrive at different conclusions under the same statutory provision.'' 81 FR 24431; April 25, 2016. However, this type of weighing of factors and circumstances is an inherent part of regulatory decision-making, and the EPA finds it is a reasonable approach in this case.

Next, we turn to our alternative approach of a formal benefit-cost analysis (BCA). This approach independently supports the determination that it is appropriate to regulate EGU HAP. Based on the 2011 RIA performed as part of the 2012 MATS Final Rule, the total net benefits of MATS were overwhelmingly positive even though the EPA was only able to quantify and monetize a subset of the many societal benefits of reducing HAP emissions from EGUs. Like the preferred approach, this conclusion is further supported by newer information on the risks posed by HAP emissions from EGUs as well as new information on the actual costs of implementing MATS, which likely were significantly overestimated in the 2011 RIA.

This final action is organized as follows. In section II.A of this preamble, we provide as background the regulatory and procedural history leading to this action. We also detail, in preamble section II.B, the statutory design of HAP regulation that Congress added to the CAA in 1990 in the face of the EPA's failure to make meaningful progress in regulating HAP emissions from stationary sources. In particular, we point out that many provisions of CAA section 112 demonstrate the value Congress placed on reducing the volume

[4] U.S. EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards.* EPA–452/R–11–011. Available at: *https://www3.epa.gov/ttn/ecas/docs/ria/utilities_ria_final-mats_2011-12.pdf.*

of HAP emissions from stationary sources as much and as quickly as possible, with a particular focus on reducing HAP related risks to the most exposed and most sensitive members of the public. This background assists in identifying the relevant statutory factors to weigh in considering the advantages and disadvantages of HAP regulation.

Section III of the preamble provides a brief summary of the 2022 Proposal's findings. In section III.A, we review the public health and environmental burden associated with EGU HAP emissions by summarizing information previously recognized and documented in the statutorily mandated CAA section 112(n)(1) studies, as well as additional risk analyses supported by new scientific studies introduced in the 2022 Proposal. Section III.B considers the costs of the MATS regulation and describes the basis for the EPA's conclusion that the original cost projection in the 2011 RIA was likely a significant overestimate of the actual cost. These two sections establish the foundation for the EPA's rationale for both revoking the 2020 Final Action and affirming our determination that regulation of HAP emissions from coal- and oil-fired EGUs is appropriate and necessary in light of advantages and disadvantages using our preferred totality-of-the-circumstances approach. The revocation of the 2020 Final Action is discussed in section III.C, and the Administrator's preferred totality-of-the-circumstances approach is presented in section III.D. In section III.E, we describe our alternative approach to the appropriate and necessary determination which applies a formal BCA and that independently supports the appropriate and necessary determination. Finally, in section III.F, we present the Administrator's final determination that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs after considering cost.

The EPA provided opportunities for public comment on our proposed revocation of the 2020 Final Action and our affirmation that it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. See 87 FR 7624 (February 9, 2022). Section IV of this preamble describes some of the most pertinent public comments received on the 2022 Proposal and provides the EPA's responses. (All of the comments are addressed in the EPA's 2023 Response to Comments (RTC) Document.[5]) This section follows the same order as the preceding section with individual sections for comment responses for health hazards (IV.A), costs (IV.B), revocation (IV.C), the preferred approach (*i.e.,* totality of the circumstances) (IV.D), and the alternative approach (*i.e.,* formal BCA) (IV.E).

Finally, section V of this document notes that because this action reaffirms prior determinations and does not impact implementation of MATS, the action does not result in any cost, environmental, or economic impacts.[6]

B. Does this action apply to me?

The source category that is the subject of this action is coal- and oil-fired EGUs regulated by NESHAP under 40 CFR part 63, subpart UUUUU, commonly known as MATS. The North American Industry Classification System (NAICS) codes for the coal- and oil-fired EGU source category are 221112, 221122, and 921150. This list of NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this action is likely to affect.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this action at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final action and key technical documents at this same website.

D. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 5, 2023. Under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. That section of the CAA also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. Regulatory History

In the 1990 Amendments, Congress substantially modified CAA section 112 to address HAP emissions from stationary sources. CAA section 112(b)(1) sets forth a list of 187 identified HAP, and CAA sections 112(b)(2) and (3) give the EPA the authority to add or remove pollutants from the list. CAA section 112(a)(1) and (2) specify the two types of sources to be addressed: major sources and area sources. A major source is any stationary source or group of stationary sources at a single location and under common control that emits or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP. CAA section 112(a)(1). Any stationary source of HAP that is not a major source is an area source.[7] CAA section 112(a)(2). All major source categories, besides EGUs, and certain area source categories, were required to be included on an initial published list of sources subject to regulation under CAA section 112. See CAA sections 112(a)(1) and (c)(1). The EPA is required to promulgate emission standards under CAA section 112(d) for

[5] *Mercury and Air Toxics Standards for Power Plants 2022 Proposed Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding. Response to Comments.* Available in the rulemaking docket, Docket ID No. EPA–HQ–OAR–2018–0794.

[6] However, finalizing this affirmative threshold determination provides important certainty about the future of MATS for regulated industry, states, other stakeholders, and the public.

[7] The statute includes a separate definition of ''EGU'' that includes both major and area source power plant facilities. CAA section 112(a)(8).

every source category on the CAA section 112(c)(1) list.

The general CAA section 112(c) process for listing source categories does not apply to EGUs. Instead, Congress enacted a special provision, CAA section 112(n)(1)(A), which establishes a separate process by which the EPA determines whether to add EGUs to the CAA section 112(c) list of source categories that must be regulated under CAA section 112. Because EGUs were subject to other CAA requirements under the 1990 Amendments, most importantly the Acid Rain Program (ARP), CAA section 112(n)(1)(A) directs the EPA to conduct a study to evaluate the hazards to public health that are reasonably anticipated to occur as a result of the HAP emissions from EGUs ''after imposition of the requirements of this chapter.'' See CAA section 112(n)(1)(A); see also *Michigan* v. *EPA,* 576 U.S. at 748 (''Quite apart from the hazardous-air-pollutants program, the Clean Air Act Amendments of 1990 subjected power plants to various regulatory requirements. The parties agree that these requirements were expected to have the collateral effect of reducing power plants' emissions of hazardous air pollutants, although the extent of the reduction was unclear.''). The provision directs that the EPA shall regulate EGUs under CAA section 112 if the Administrator determines, after considering the results of the study, that such regulation is ''appropriate and necessary.'' CAA section 112(n)(1)(A), as enacted in 1990, therefore sets a unique process by which the Administrator was to make a one-time determination whether to add EGUs to the CAA section 112(c) list of sources that must be subject to regulation under CAA section 112.

The study required under CAA section 112(n)(1)(A) is one of three studies commissioned by Congress under CAA section 112(n)(1), a subsection entitled ''Electric utility steam generating units.'' The first, which, as noted, the EPA was required to consider before making the appropriate and necessary determination, was completed in 1998 and was entitled ''Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units–Final Report to Congress'' (Utility Study).[8] The Utility Study contained an analysis of HAP emissions from EGUs, an assessment of the hazards and risks due to inhalation exposures to these emitted pollutants, and a multipathway (inhalation plus non-inhalation exposures) risk assessment for mercury and a subset of other relevant HAP. The study indicated that mercury was the HAP of greatest concern to public health from coal- and oil-fired EGUs. The study also concluded that numerous control strategies were available to reduce HAP emissions from this source category.

The second study commissioned by Congress under CAA section 112(n)(1)(B), the ''Mercury Study Report to Congress'' (Mercury Study),[9] was released in 1997. Under this provision, the statute tasked the EPA with focusing exclusively on mercury, but directed the EPA to look at other stationary sources in addition to EGUs, the rate and mass of emissions coming from those sources, available technologies for controlling mercury and the costs of such technologies, and a broader scope of impacts including environmental effects. As in the Utility Study, the EPA confirmed that mercury is highly toxic, persistent, and bioaccumulates in food chains. Fish consumption is the primary pathway for human exposure to mercury, which can lead to higher risks in certain populations. The third study, required under CAA section 112(n)(1)(C), directed the National Institute of Environmental Health Sciences (NIEHS) to conduct a study to determine the threshold level of mercury exposure below which adverse human health effects were not expected to occur (NIEHS Study). The statute required that the study include a threshold for mercury concentrations in the tissue of fish that could be consumed, even by sensitive populations, without adverse effects to public health. The NIEHS submitted the required study to Congress in 1995.[10] See 76 FR 24982 (May 3, 2011).

Later, after submission of the CAA section 112(n)(1) reports and as part of the fiscal year 1999 appropriations, Congress further directed the EPA to fund the National Academy of Sciences (NAS) to perform an independent evaluation of the data related to the health impacts of methylmercury, and, similar to the CAA section 112(n)(1)(C) inquiry, specifically to advise the EPA as to the appropriate reference dose (RfD) for methylmercury. Congress also indicated in the 1999 conference report directing the EPA to fund the NAS Study, that the EPA should not make the appropriate and necessary regulatory determination until the EPA had reviewed the results of the NAS Study. See H.R. Conf. Rep. No. 105–769, at 281–282 (1998). This last study, completed by the NAS in 2000, was entitled ''Toxicological Effects of Methylmercury'' (NAS Study),[11] and it presented a rigorous peer-review of the EPA's RfD for methylmercury.

Based on the results of these studies and other available information, the EPA determined on December 20, 2000, pursuant to CAA section 112(n)(1)(A), that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs and added such units to the CAA section 112(c) list of source categories that must be regulated under CAA section 112. See 65 FR 79825 (December 20, 2000) (2000 Determination).[12]

In 2005, the EPA revised the original 2000 Determination and concluded that it was neither appropriate nor necessary to regulate EGUs under CAA section 112 in part because the EPA concluded it could address risks from EGU HAP emissions under a different provision of the statute. See 70 FR 15994 (March 29, 2005) (2005 Revision). Based on that determination, the EPA removed coal- and oil-fired EGUs from the CAA section 112(c) list of source categories to be regulated under CAA section 112. In a separate but related 2005 action, the EPA also promulgated the Clean Air Mercury Rule (CAMR), which established CAA section 111 standards of performance for mercury emissions from EGUs. See 70 FR 28605 (May 18, 2005). Both the 2005 Revision and the CAMR were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (the court) in 2008. *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008). The court held that the EPA failed to comply with the requirements of CAA section 112(c)(9) for delisting source categories, and consequently also vacated the CAA section 111 performance standards promulgated in CAMR, without addressing the merits of those standards. *Id.* at 582–84.

Subsequent to the *New Jersey* decision, the EPA conducted additional technical analyses, including peer-reviewed risk assessments on human

[8] U.S. EPA. *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress.* EPA–453/R–98–004a. February 1998.

[9] U.S. EPA. 1997. *Mercury Study Report to Congress.* EPA–452/R–97–003 December 1997.

[10] National Institute of Environmental Health Sciences (NIEHS) Report on Mercury; available in the rulemaking docket at EPA–HQ–OAR–2009–0234–3053.

[11] National Research Council (NAS). 2000. *Toxicological Effects of Methylmercury.* Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology, National Research Council. Many of the peer-reviewed articles cited in this section are publications originally cited in the NAS report.

[12] In the same 2000 action, the EPA Administrator found that regulation of HAP emissions from natural gas-fired EGUs is not appropriate or necessary because the impacts due to HAP emissions from such units are negligible. See 65 FR 79831 (December 20, 2000).

health effects associated with mercury (2011 Final Mercury TSD) [13] and non-mercury metal HAP emissions from EGUs (2011 Non-Hg HAP Assessment).[14] Those analyses, which focused on populations with higher fish consumption (*e.g.,* subsistence fishers) and residents living near the facilities who experienced increased exposure to HAP through inhalation, found that mercury and non-mercury HAP emissions from EGUs remain a public health hazard and that EGUs were the largest anthropogenic source of mercury emissions to the atmosphere in the U.S. Based on these findings, and other relevant information regarding the volume of HAP, environmental effects, and availability of controls, in 2012, the EPA affirmed the original 2000 Determination that it is appropriate and necessary to regulate EGUs under CAA section 112. See 77 FR 9304 (February 16, 2012).

In the same 2012 action, the EPA established a NESHAP, commonly referred to as MATS, that required coal- and oil-fired EGUs to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for all HAP emissions from EGUs.[15] MATS applies to existing and new coal- and oil-fired EGUs located at both major and area sources of HAP emissions. An EGU is a fossil fuel-fired steam generating combustion unit of more than 25 megawatts (MW) that serves a generator that produces electricity for sale. See CAA section 112(a)(8) (defining EGU). A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW electric output to any utility power distribution system for sale is also an EGU. *Id.*

For coal-fired EGUs, MATS includes standards to limit emissions of mercury, acid gas HAP, non-mercury HAP metals (*e.g.,* nickel, lead, chromium), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Standards for hydrogen chloride (HCl) serve as a surrogate for the acid gas HAP, with an alternate standard for sulfur dioxide (SO_2) that may be used as a surrogate for acid gas HAP for those coal-fired EGUs with flue gas desulfurization (FGD) systems and SO_2 continuous emissions monitoring systems that are installed and operational. Standards for filterable PM serve as a surrogate for the non-mercury HAP metals, with standards for total non-mercury HAP metals and individual non-mercury HAP metals provided as alternative equivalent standards. Work practice standards that require periodic combustion process tune-ups were established to limit formation and emissions of the organic HAP.

For oil-fired EGUs, MATS includes standards to limit emissions of HCl and hydrogen fluoride (HF), total HAP metals (*e.g.,* mercury, nickel, lead), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Standards for filterable PM serve as a surrogate for total HAP metals, with standards for total HAP metals and individual HAP metals provided as alternative equivalent standards. Periodic combustion process tune-up work practice standards were established to limit formation and emissions of the organic HAP.

Additional detail regarding the types of units regulated under MATS and the regulatory requirements that they are subject to can be found in 40 CFR part 63, subpart UUUUU.[16] The existing source compliance date was April 16, 2015, but many existing sources were granted an additional 1-year extension of the compliance date for the installation of controls. Currently all affected sources (*i.e.,* all coal- and oil-fired EGUs that meet the definition of an Electric Utility Steam Generating Unit in CAA section 112(a)(8)) are subject to the requirements in MATS.

After MATS was promulgated, both the rule itself and many aspects of the EPA's appropriate and necessary determination were challenged in the D.C. Circuit court (the court). In *White Stallion Energy Center* v. *EPA,* 748 F.3d 1222 (2014), the court unanimously denied all challenges to MATS, with one exception discussed below in which the court denied the challenge in an opinion that was not unanimous. As part of its decision, the court concluded that the ''EPA's 'appropriate and necessary' determination in 2000, and the reaffirmation of that determination in 2012, are amply supported by EPA's findings regarding the health effects of mercury exposure.'' *Id.* at 1245.[17] While joining the majority's conclusions as to the adequacy of the EPA's identification of public health hazards, then-judge Kavanaugh dissented on the issue of whether the EPA erred by not considering costs together with the harms of HAP emissions when making the ''appropriate and necessary'' determination, finding that cost was a required consideration under that determination. *Id.* at 1258–59 (Kavanaugh, J., dissenting).

The U.S. Supreme Court (the Court) subsequently granted *certiorari,* directing the parties to address a single question posed by the Court itself: ''Whether the Environmental Protection Agency unreasonably refused to consider cost in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities.'' *Michigan* v. *EPA,* 135 S. Ct. 702 (Mem.) (2014). In 2015, the Court held that ''EPA interpreted [CAA section 112(n)(1)(A)] unreasonably when it deemed cost irrelevant to the decision to regulate power plants.'' *Michigan,* 576 U.S. at 760. In so holding, the Court found that the EPA ''must consider cost—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary.'' *Id.* at 2711. It is ''up to the Agency,'' the Court added, ''to decide (as always, within the limits of reasonable interpretation) how to account for cost.'' *Id.* The rule was ultimately remanded back to the EPA to complete the required cost analysis, and the court left the MATS rule in place pending the completion of that analysis. *White Stallion Energy Center* v. *EPA,* No. 12–1100, ECF No. 1588459 (D.C. Cir. December 15, 2015).

[13] U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish in Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. December 2011. EPA–452/R–11–009. Docket ID Item No. EPA–HQ–OAR–2009–0234–19913 (2011 Final Mercury TSD).

[14] U.S. EPA. 2011. *Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November 2011. EPA–452/R–11–013. Docket ID Item No. EPA–HQ–OAR–2009–0234–19912 (2011 Non-Hg HAP Assessment).

[15] Although the 2012 MATS Final Rule has been amended several times, the amendments are not a result of actions regarding the appropriate and necessary determination and, therefore, are not discussed in this preamble. Detail regarding those amendatory actions can be found at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

[16] Available at *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-63/subpart-UUUUU.*

[17] In discussing the 2011 Final Mercury TSD, the D.C. Circuit concluded that the EPA considered the available scientific information in a rational manner, and stated:

As explained in the technical support document (TSD) accompanying the Final Rule, EPA determined that mercury emissions posed a significant threat to public health based on an analysis of women of child-bearing age who consumed large amounts of freshwater fish. See [2011 Final] Mercury TSD . . . . The design of EPA's TSD was neither arbitrary nor capricious; the study was reviewed by EPA's independent Science Advisory Board, stated that it ''support[ed] the overall design of and approach to the risk assessment'' and found ''that it should provide an objective, reasonable, and credible determination of potential for a public health hazard from mercury emissions emitted from U.S. EGUs.'' . . . In addition, EPA revised the final TSD to address SAB's remaining concerns regarding EPA's data collection practices.

Id. at 1245–46.

In response to the Court's direction, the EPA finalized a supplemental finding on April 25, 2016, that evaluated the costs of complying with MATS and concluded that the appropriate and necessary determination was still valid. The 2016 Supplemental Finding promulgated two different approaches to incorporate cost into the decision-making process for the appropriate and necessary determination. See 81 FR 24420 (April 25, 2016). The EPA determined that both approaches independently supported the conclusion that regulation of HAP emissions from EGUs is appropriate and necessary.

The EPA's preferred approach to incorporating cost in 2016 evaluated estimated costs of compliance with MATS against several cost metrics relevant to the EGU sector (*e.g.,* historical annual revenues, annual capital expenditures, and impacts on retail electricity prices) and found that the projected costs of MATS were reasonable for the sector in comparison with historical data on those metrics. These metrics are relevant measures for evaluating costs to the utility sector in part because they are the types of metrics considered by the owners and operators of EGUs themselves.[18] The evaluation of cost metrics that the EPA applied was consistent with approaches commonly used to evaluate environmental policy cost impacts.[19] The EPA also examined as part of its cost analysis what the impact of MATS would be on retail electricity prices and the reliability of the power grid. The EPA then weighed these supplemental findings regarding cost against the existing administrative record detailing the identified hazards to public health and the environment from mercury, non-mercury metal HAP, and acid gas HAP that are listed under CAA section 112, and the other advantages to regulation. Based on that balancing, the EPA concluded under the preferred approach that it remained appropriate to regulate HAP emissions from EGUs after considering cost. See 81 FR 24420 (April 25, 2016) (''After evaluating cost reasonableness using several different metrics, the Administrator has, in accordance with her statutory duty under CAA section 112(n)(1)(A), weighed cost against the previously identified advantages of regulating HAP emissions from EGUs—including the agency's prior conclusions about the significant hazards to public health and the environment associated with such emissions and the volume of HAP that would be reduced by regulation of EGUs under CAA section 112.'').

In a second alternative and independent approach (referred to as the alternative approach), in 2016 the EPA considered a formal BCA and applied the formal BCA that was available in the 2011 RIA for the 2012 MATS Final Rule. *Id.* at 24421. In that analysis, even though the EPA was only able to monetize one HAP-specific endpoint, the EPA estimated that in 2015 the final MATS rule would yield annual monetized net benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and between $33 billion to $81 billion using a 7-percent discount rate, in comparison to the projected $9.6 billion in annual compliance costs. The vast majority of these monetized social benefits were the result of non-HAP emission reductions due to the MATS requirements. See *id.* at 24425. The EPA therefore determined that the alternative approach also independently supported the conclusion that regulation of HAP emissions from EGUs remains appropriate after considering cost. *Id.*

Several state and industry groups petitioned for review of the 2016 Supplemental Finding in the D.C. Circuit. *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. filed April 25, 2016). In April 2017, the EPA moved the court to continue oral argument and hold the case in abeyance in order to give the then-new Administration an opportunity to review the 2016 action, and the court ordered that the consolidated challenges to the 2016 Supplemental Finding be held in abeyance (*i.e.,* temporarily on hold).[20]

Accordingly, the EPA reviewed the 2016 action, and on May 22, 2020, finalized a revised response to the *Michigan* decision. See 85 FR 31286 (May 22, 2020). In the 2020 Final Action, after primarily comparing the projected costs of compliance to the single HAP emission reduction impact that could be monetized, the EPA reconsidered its previous determination and found that it is not appropriate to regulate HAP emissions from coal- and oil-fired EGUs after a consideration of cost, thereby reversing the EPA's conclusion under CAA section 112(n)(1)(A), first made in 2000 and later affirmed in 2012 and 2016. Specifically, in its reconsideration, the EPA asserted that the 2016 Supplemental Finding considering the cost of MATS was flawed based on its assessment that neither of the two approaches to considering cost in the 2016 Supplemental Finding satisfied the EPA's obligation under CAA section 112(n)(1)(A), as that provision was interpreted by the U.S. Supreme Court in *Michigan.* Additionally, the EPA determined that, while the 2020 Final Action reversed the 2016 Supplemental Finding, it did not remove the coal- and oil-fired EGU source category from the CAA section 112(c)(1) list, nor would it affect the existing CAA section 112(d) emissions standards regulating HAP emissions from coal- and oil-fired EGUs that were promulgated in the 2012 MATS Final Rule.[21] See 85 FR 31312 (May 22, 2020).

In the 2020 Final Action, the EPA also finalized the risk review required by CAA section 112(f)(2) and the first technology review required by CAA section 112(d)(6) for the coal- and oil-fired EGU source category regulated under MATS.[22] The EPA determined that residual risks due to emissions of air toxics from the coal- and oil-fired EGU source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health and to prevent an adverse environmental effect. In the technology review, the EPA did not identify any new developments in HAP emission controls to achieve further cost-effective emissions reductions. Based on the results of these reviews, the EPA found that no revisions to MATS were warranted. See 85 FR 31314 (May 22, 2020).

[18] 81 FR 24428 (April 25, 2016).

[19] For example, see ''Economic Impact and Small Business Analysis–Mineral Wool and Wool Fiberglass RTRs and Wool Fiberglass Area Source NESHAP'' (U.S. EPA, 2015; *https://www.epa.gov/sites/default/files/2020-07/documents/mwwf_eia_neshap_final_07-2015.pdf*) or ''Economic Impact Analysis of Final Coke Ovens NESHAP'' (U.S. EPA, 2002; *https://www.epa.gov/sites/default/files/2020-07/documents/coke-ovens_eia_neshap_final_08-2002.pdf*).

[20] Order, *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. April 27, 2017), ECF No. 1672987. In response to a joint motion from the parties to govern future proceedings, the D.C. Circuit issued an order in February 2021 to continue to hold the consolidated cases in *Murray Energy Corp.* v. *EPA* in abeyance. Order, *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. February 25, 2021), ECF No. 1887125.

[21] This finding was based on *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008), which held that the EPA is not permitted to remove source categories from the CAA section 112(c)(1) list unless the CAA section 112(c)(9) criteria for delisting have been met.

[22] CAA section 112(f)(2) requires the EPA to conduct a one-time review of the risks remaining after imposition of MACT standards under CAA section 112(d)(2) within 8 years of the effective date of those standards (risk review). CAA section 112(d)(6) requires the EPA to conduct a review of all CAA section 112(d) standards at least every 8 years to determine whether it is necessary to establish more stringent standards after considering, among other things, advances in technology and costs of additional control (technology review). The EPA has always conducted the first technology review at the same time it conducts the risk review and collectively the actions are known at RTRs.

Several states, industry, public health, environmental, and civil rights groups petitioned for review of the 2020 Final Action in the D.C. Circuit. *American Academy of Pediatrics* v. *Regan,* No. 20–1221 and consolidated cases (D.C. Cir. filed June 19, 2020). On September 28, 2020, the court granted the EPA's unopposed motion to sever from the lead case and hold in abeyance two of the petitions for review: *Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir. filed May 22, 2020) (challenging the 2020 Final Action as well as prior EPA actions related to MATS, including a challenge to the MATS CAA section 112(d) standards on the basis that the 2020 Final Action's reversal of the appropriate and necessary determination provided a ''grounds arising after'' for filing a petition outside the 60-day window for judicial review of MATS), and *Air Alliance Houston* v. *EPA,* No. 20–1268 (D.C. Cir. filed July 21, 2020) (challenging only the RTR portion of the 2020 Final Action).[23]

On January 20, 2021, the President signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' The Executive order, among other things, instructs the EPA to review the 2020 Final Action and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. In February 2021, the EPA moved the court to hold *American Academy of Pediatrics* and consolidated cases in abeyance, pending the EPA's review of the 2020 Final Action as prompted in Executive Order 13990, and on February 16, 2021, the D.C. Circuit granted the EPA's motion.[24] On February 9, 2022, the EPA proposed to revoke the 2020 Final Action's determination that it is not appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under section 112 of the CAA and to reaffirm our earlier determinations—made in 2000 (65 FR 79825; December 20, 2000) (2000 Determination), 2012 (77 FR 9304; February 16, 2012) (2012 MATS Final Rule), and 2016—that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the CAA.

In the meantime, the requirements of MATS have been fully implemented, resulting in significant reductions in HAP emissions from EGUs and the risks associated with those emissions. When the final rule was promulgated, the EPA projected that annual EGU mercury emissions would be reduced by 75 percent with MATS implementation. In fact, considering MATS and other market conditions, EGU mercury emission reductions have been far more substantial and have decreased to approximately 4 tons in 2017, which represents an 86 percent reduction compared to 2010 (pre-MATS) levels. See Table 4 at 84 FR 2689 (February 7, 2019). Acid gas HAP and non-mercury metal HAP emissions have similarly been reduced—by 96 percent and 81 percent, respectively—as compared to 2010 levels. *Id.* MATS is the only Federal requirement that requires HAP control from EGUs.

After considering public comment on the 2022 Proposal, the EPA is finalizing a revocation of the 2020 reconsideration of the 2016 Supplemental Finding and reaffirming once again that it is appropriate and necessary to regulate emissions of HAP from coal- and oil-fired EGUs. We will provide notice of the results of our review of the 2020 RTR in a separate future action.

B. Statutory Background

Additional statutory context is useful to help identify the relevant factors that the Administrator should weigh when making the appropriate and necessary determination.

1. Pre-1990 History of HAP Regulation

In 1970, Congress enacted CAA section 112 to address the millions of pounds of HAP emissions that were estimated to be emitted from stationary sources in the country. At that time, the CAA defined HAP as ''an air pollutant to which no ambient air quality standard is applicable and which, in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness,'' but the statute left it to the EPA to identify and list pollutants that were HAP. Once a HAP was listed, the statute required the EPA to regulate sources of that identified HAP ''at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutants.'' CAA section 112(b)(1)(B) (pre-1990 amendments); Legislative History of the CAA Amendments of 1990 (''Legislative History''), at 3174–75, 3346 (Comm. Print 1993). The statute did not define the term ''ample margin of safety'' or provide a risk metric on which the EPA was to establish standards, and initially the EPA endeavored to account for costs and technological feasibility in every regulatory decision. In *Natural Resources Defense Council (NRDC)* v. *EPA,* 824 F.2d 1146 (D.C. Cir. 1987), the court concluded that the CAA required that in interpreting what constitutes ''safe,'' the EPA was prohibited from considering cost and technological feasibility. *Id.* at 1166.

The EPA subsequently issued the NESHAP for benzene in accordance with the *NRDC* holding.[25] Among other things, the Benzene NESHAP concluded that there is a rebuttable presumption that any cancer risk greater than 100-in-1 million to the most exposed individual is unacceptable, and per *NRDC,* must be addressed without consideration of cost or technological feasibility. The Benzene NESHAP further provided that, after evaluating the acceptability of cancer risks, the EPA must evaluate whether the current level of control provides an ample margin of safety for any risk greater than 1-in-1 million and, if not, the EPA will establish more stringent standards as necessary after considering cost and technological feasibility.[26]

2. Clean Air Act 1990 Amendments to Section 112

As the following discussion demonstrates, throughout CAA section 112 and its legislative history, Congress made clear its intent to quickly secure large reductions in the volume of HAP emissions from stationary sources because of its recognition of the hazards to public health and the environment that result from exposure to such emissions. CAA section 112 and its legislative history also reveal Congress' understanding that fully characterizing the risks posed by HAP emissions was exceedingly difficult; thus, Congress purposefully replaced a regime that required the EPA to make an assessment of risk in the first instance, with one in which Congress determined risk existed and directed the EPA to make swift and substantial reductions based upon the

[23] Order, *Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir. September 28, 2020), ECF No. 1863712.

[24] Order, *American Academy of Pediatrics* v. *Regan,* No. 20–1221 (D.C. Cir. February 16, 2021), ECF No. 1885509.

[25] National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP). 54 FR 38044 (September 14, 1989).

[26] ''In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' Benzene NESHAP, 54 FR 38044–5, September 14, 1989.

most stringent standards technology could achieve. The statutory design and direction also repeatedly emphasize that the EPA should regulate with the most exposed and most sensitive members of the population in mind in order to achieve an acceptable level of HAP emissions with an ample margin of safety. As explained further below, this statutory context informs the EPA's judgment as to the relevant factors to weigh in the analysis of whether regulation remains appropriate along with a consideration of cost.

In 1990, Congress radically transformed section 112 of the CAA and its treatment of hazardous air pollution. The legislative history of the amendments indicates Congress' dissatisfaction with the EPA's slow pace addressing these pollutants under the 1970 CAA: ''In theory, [hazardous air pollutants] were to be stringently controlled under the existing Clean Air Act section 112. However, . . . only 7 of the hundreds of potentially hazardous air pollutants have been regulated by EPA since section 112 was enacted in 1970.'' H.R. Rep. No. 101–490, at 315 (1990); see also *id.* at 151 (noting that in 20 years, the EPA's establishment of standards for only seven HAP covered ''a small fraction of the many substances associated . . . with cancer, birth defects, neurological damage, or other serious health impacts.''). Congress was concerned with how few sources had been addressed during this time. *Id.* (''[The EPA's] regulations sometimes apply only to limited sources of the relevant pollutant. For example, the original benzene standard covered just one category of sources (equipment leaks). Of the 50 toxic substances emitted by industry in the greatest volume in 1987, only one—benzene—has been regulated even partially by EPA.''). Congress noted that state and local regulatory efforts to act in the face of ''the absence of Federal regulations'' had ''produced a patchwork of differing standards,'' and that ''[m]ost states . . . limit the scope of their program by addressing a limited number of existing sources or source categories, or by addressing existing sources only on a case-by-case basis as problem sources are identified'' and that ''[o]ne state exempts all existing sources from review.'' *Id.*

In enacting the 1990 Amendments with respect to the control of hazardous air pollution, Congress noted that ''[p]ollutants controlled under [section 112] tend to be less widespread than those regulated [under other sections of the CAA], but are often associated with more serious health impacts, such as cancer, neurological disorders, and reproductive dysfunctions.'' *Id.* at 315. In its substantial 1990 Amendments, Congress itself listed 189 HAP (CAA section 112(b)) and set forth a statutory structure that would ensure swift regulation of a significant majority of these HAP emissions from stationary sources. Specifically, after defining major and area sources and requiring the EPA to list all major sources and many area sources of the listed pollutants (CAA section 112(c)), the new CAA section 112 required the EPA to establish technology-based emission standards for listed source categories on a prompt schedule and to revisit those technology-based standards every 8 years (CAA section 112(d) (emission standards); CAA section 112(e) (schedule for standards and review)). The 1990 Amendments also obligated the EPA to evaluate the residual risk within 8 years of promulgation of technology-based standards. CAA section 112(f)(2).

In setting the standards, CAA section 112(d) requires the EPA to establish technology-based standards that achieve the ''maximum degree of reduction,'' ''including a prohibition on such emissions where achievable.'' CAA section 112(d)(2). Congress specified that the maximum degree of reduction must be at least as stringent as the average level of control achieved in practice by the best performing sources in the category or subcategory based on emissions data available to the EPA at the time of promulgation. This technology-based approach permitted the EPA to swiftly set standards for source categories without determining the risk or cost in each specific case, as the EPA had done prior to the 1990 Amendments. In other words, this approach to regulation quickly required that all major sources and many area sources of HAP install control technologies consistent with the top performers in each category, which had the effect of obtaining immediate reductions in the volume of HAP emissions from stationary sources. The statutory requirement that sources obtain levels of emission limitation that have actually been achieved by existing sources, instead of levels that could theoretically be achieved, inherently reflects a built-in cost consideration.[27]

Further, after determining the minimum stringency level of control, or MACT floor, CAA section 112(d)(2) directs the EPA to ''require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable)'' that the EPA determines are achievable after considering the cost of achieving such standards and any non-air-quality health and environmental impacts and energy requirements of additional control. In doing so, the statute further specifies in CAA section 112(d)(2) that the EPA should consider requiring sources to apply measures that, among other things, ''reduce the volume of, or eliminate emissions of, such pollutants . . . '' (CAA section 112(d)(2)(A)), ''enclose systems or processes to eliminate emissions'' (CAA section 112(d)(2)(B)), and ''collect, capture, or treat such pollutants when released . . .'' (CAA section 112(d)(2)(C)). The 1990 Amendments also built in a regular review of new technologies and a one-time review of risks that remain after imposition of MACT standards. CAA section 112(d)(6) requires the EPA to evaluate every NESHAP no less often than every 8 years to determine whether additional control is necessary after taking into consideration ''developments in practices, processes, and control technologies,'' without regard to risk. CAA section 112(f) requires the EPA to ensure within 8 years of promulgating a NESHAP that the risks are acceptable and that the MACT standards provide an ample margin of safety.

The statutory requirement to establish technology-based standards under CAA section 112 eliminated the requirement for the EPA to identify hazards to public health and the environment in order to justify regulation of HAP emissions from stationary sources, reflecting Congress' judgment that such emissions are inherently dangerous. See S. Rep. No. 101–228, at 148 (''The MACT standards are based on the performance of technology, and not on the health and environmental effects of the [HAP].''). The technology review required in CAA section 112(d)(6) further mandates that the EPA continually reassess standards to determine if additional reductions can be obtained, without evaluating the specific risk associated with the HAP

[27] Congress recognized as much:

''The Administrator may take the cost of achieving the maximum emission reduction and any non-air quality health and environmental impacts and energy requirements into account when determining the emissions limitation which is achievable for the sources in the category or subcategory. Cost considerations are reflected in the selection of emissions limitations which have been achieved in practice (rather than those which are merely theoretical) by sources of a similar type or character.''

A Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History), Vol 5, pp. 8508 –8509 (CAA Amendments of 1989; p. 168–169; Report of the Committee on Environment and Public Works S. 1630).

emissions that would be reduced. Notably, the CAA section 112(d)(6) review of what additional reductions may be obtained based on new technology is required *even after* the EPA has conducted the one-time CAA section 112(f)(2) review and determined that the existing standard will protect the public with an ample margin of safety.

The statutory structure and legislative history also demonstrate Congress' concern with the many ways that HAP can harm human health and Congress' goal of protecting the most exposed and vulnerable members of society. The committee report accompanying the 1990 Amendments discussed the scientific understanding regarding HAP risk at the time, including the 1989 report on benzene performed by the EPA noted above. H.R. Rep. No. 101–490, at 315. Specifically, Congress highlighted the EPA's findings as to cancer incidence, and importantly, lifetime individual risk to the most exposed individuals. *Id.* The report also notes the limitations of the EPA's assessment: ''The EPA estimates evaluated the risks caused by emissions of a single toxic air pollutant from each plant. But many facilities emit numerous toxic pollutants. The agency's risk assessments did not consider the combined or synergistic effects of exposure to multiple toxics, or the effect of exposure through indirect pathways.'' *Id.* Congress also noted the EPA's use of the maximum exposed individual (MEI) tool to assess risks faced by heavily exposed citizens. *Id.* The report cited particular scientific studies demonstrating that some populations are more affected than others—for example, it pointed out that ''[b]ecause of their small body weight, young children and fetuses are especially vulnerable to exposure to PCB-contaminated fish. One study has found long-term learning disabilities in children who had eaten high-levels of Great Lakes fish.'' *Id.*

The statutory structure confirms Congress' approach to risk and sensitive populations. As noted, the CAA section 112(f)(2) residual risk review requires the EPA—8 years after promulgating the original MACT standard—to consider whether, after imposition of the CAA section 112(d)(2) MACT standard, there are remaining risks from HAP emissions that warrant more stringent standards to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. See CAA section 112(f)(2)(A). Specifically, the statute requires the EPA to promulgate standards under this risk review provision if the CAA section 112(d) MACT standard does not ''reduce lifetime excess cancer risks to *the individual most exposed* to emissions from a source in the category or subcategory to less than one in one million.'' *Id.* (emphasis added). Thus, even after the application of MACT standards, the statute directs the EPA to conduct a rulemaking if even *one* person (*i.e.,* ''the individual most exposed to emissions'') has a risk, not a guarantee, of getting cancer. This demonstrates the statutory intent to protect even the most exposed member of the population from the harms attendant to exposure to HAP emissions.

If a residual risk rulemaking is required, as noted above, the statute incorporates the detailed two-step rulemaking approach set forth in the Benzene NESHAP for determining (1) whether HAP emissions from stationary sources pose an unacceptable risk and (2) whether standards provide an ample margin of safety. See CAA section 112(f)(2)(B) (preserving the prior interpretation of ''ample margin of safety'' set forth in the Benzene NESHAP). The first step of this approach includes a rebuttable presumption that any cancer risk greater than 100-in-1 million to the most exposed person is per se unacceptable. For non-cancer chronic and acute risks, the EPA has more discretion to determine what is acceptable, but even then, the statute requires the EPA to evaluate the risks to the most exposed individual and EPA RfDs are developed with the goal of being protective of even sensitive members of the population. See, *e.g.,* CAA section 112(n)(1)(C) (requiring, in part, the development of ''a threshold for mercury concentration in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health''). If risks are found to be unacceptable, the EPA must impose additional control requirements to ensure that post CAA section 112(f) risks from HAP emissions are at an acceptable level, regardless of cost and technological feasibility.

After determining whether the risks are acceptable and developing standards to achieve an acceptable level of risk if necessary, under the second step the EPA must then determine whether more stringent standards are necessary to provide an ample margin of safety to protect public health, and at this stage we must take into consideration cost, technological feasibility, uncertainties, and other relevant factors. As stated in the Benzene NESHAP, ''In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by . . . protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million.'' See 54 FR 38044–45 (September 14, 1989); see also *NRDC* v. *EPA,* 529 F.3d 1077, 1082 (D.C. Cir. 2008) (finding that ''the Benzene NESHAP standard established a maximum excess risk of 100-in-one million, while adopting the one-in-one million standard as an aspirational goal.'').

The various listing and delisting provisions of CAA section 112 further demonstrate a statutory intent to reduce risk and protect the most exposed members of the population from HAP emissions. Because the listing and delisting provisions focus on ''any'' potential adverse health effects from HAP emissions and ''the individual in the population who is most exposed,'' the EPA must necessarily consider effects to those most exposed to such emissions. See, *e.g.,* CAA section 112(b)(2) (requiring the EPA to add pollutants to the HAP list if the EPA determines the HAP ''presents, or may present'' adverse human health or adverse environmental effects); *id.* at CAA section 112(b)(3)(B) (requiring the EPA to add a pollutant to the list if a petitioner shows that a substance is known to cause or ''may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects''); *id.* at CAA section 112(b)(3) (authorizing the EPA to delete a substance only on a showing that ''the substance may not reasonably be anticipated to cause *any* adverse effects to human health or adverse environmental effects.'') (emphasis added); *id.* at CAA section 112(c)(9)(B)(i) (prohibiting the EPA from delisting a source category if even one source in the category causes a lifetime cancer risk greater than 1-in-1 million to ''the individual in the population who is most exposed to emissions of such pollutants from the source.''); *id.* at CAA section 112(c)(9)(B)(ii) (prohibiting the EPA from delisting a source category unless the EPA determines that the non-cancer causing HAP emitted from the source category do not ''exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions of any source'' in the category); see also *id.* at CAA section 112(n)(1)(C) (requiring a study to determine the level of mercury in fish tissue that can be consumed by even ''sensitive populations'' without adverse effect to public health).

The deadlines for action included in the 1990 Amendments indicate that Congress wanted HAP emissions addressed quickly. The statute requires the EPA to list all major source categories within 1 year of the 1990 Amendments and to regulate those listed categories on a strict schedule that prioritizes the source categories that are known or suspected to pose the greatest risks to the public. See CAA sections 112(c)(1), 112(e)(1) and 112(e)(2). For area sources, where the statute provides the EPA with greater discretion to determine the sources to regulate, it also directs the EPA to collect the information necessary to make the listing decision for many area source categories and requires the EPA to act on that information by a date certain.

For example, CAA section 112(k) establishes an area source program designed to identify and list at least 30 HAP that pose the greatest threat to public health in the largest number of urban areas (urban HAP) and to list for regulation area sources that account for at least 90 percent of the area source emissions of the 30 urban HAP. See CAA sections 112(k) and 112(c)(3). In addition to the urban air toxics program, CAA section 112(c)(6) directs the EPA to identify and list sufficient source categories to ensure that at least 90 percent of the aggregate emissions of 7 bioaccumulative and persistent HAP, including mercury, are subject to standards pursuant to CAA sections 112(d)(2) or (d)(4). See CAA section 112(c)(6). Notably, these requirements were *in addition to* any controls on mercury and other CAA section 112(c)(6) HAP that would be imposed if the EPA determined it was appropriate and necessary to regulate EGUs under CAA section 112. This was despite the fact that it was known at the time of enactment that other categories with much lower emissions of mercury would have to be subject to MACT standards because of the exclusion of EGUs from CAA section 112(c)(6).

III. Final Determination Under CAA Section 112(n)(1)(A)

In this final action, the EPA is revoking the 2020 Final Action and concluding, as it did in 2000, 2012, and 2016, that it is appropriate and necessary to regulate HAP emissions from EGUs.[28] We find that, under either our preferred totality-of-the-circumstances framework or our alternative formal BCA framework, the information that was available to the EPA as of the time of the 2012 rulemaking supports a determination that it is appropriate and necessary to regulate HAP from EGUs. We also consider new information regarding the hazards to public health and the environment and the costs of compliance with MATS that has become available since the 2012 rulemaking and find that the updated information strengthens the EPA's conclusion that it is appropriate and necessary to regulate HAP from coal- and oil-fired EGUs.

At the outset, we note that CAA section 112(n)(1)(A) is silent as to whether the EPA may consider updated information when acting on a remand of the appropriate and necessary determination. CAA section 112(n)(1)(A) directs the EPA to conduct the Utility Study within 3 years, and requires the EPA to regulate EGUs if the Administrator makes a finding that it is appropriate and necessary to do so ''after'' considering the results of the Utility Study. Consistent with the EPA's interpretation in 2005, 2012, 2016, and 2020, we do not read this language to *require* the EPA to consider the most-up-to-date information where the EPA is compelled to revisit the determination, but nor do we interpret the provision to *preclude* consideration of new information where reasonable. See 70 FR 16002 (March 29, 2005); 77 FR 9310 (February 16, 2012); 81 FR 24432 (April 25, 2016); 85 FR 31306 (May 22, 2020). As such, in light of CAA section 112(n)(1)(A)'s silence on this question, the EPA has applied its discretion in determining when to consider new information under this provision based on the circumstances. For example, when the EPA was revisiting the determination in 2012, we noted that ''[b]ecause several years had passed since the 2000 finding, the EPA performed additional technical analyses for the proposed rule, even though those analyses were not required.'' 77 FR 9310 (February 16, 2012).[29] Similarly, we think that it is reasonable to consider new information in the context of this action, given that more than a decade has passed since we last considered updated information. In this reconsideration of the determination, consistent with the President's Executive Order, both the growing scientific understanding of public health risks associated with HAP emissions and a clearer picture of the cost of control technologies and the make-up of power sector generation over the last decade may inform the question of whether it is appropriate to regulate, and, in particular, help address the inquiry that the Supreme Court directed us to undertake in *Michigan.* We believe the evolving scientific information with regard to health risks of HAP emissions from EGUs and the advantage of hindsight with regard to costs warrant considering currently available information in making this determination. To the extent that our determination should flow from information that would have been available at the ''initial decision to regulate,'' *Michigan,* 576 U.S. at 754, we conclude that even if we limit ourselves to the prior record the data still support the determination. But we also believe it is reasonable to consider new data, and find that the new information regarding both public health risks and costs bolsters the finding and further supports a determination that it is appropriate and necessary to regulate EGUs for HAP.

In section III.A of this preamble, we describe the advantages of regulation—the reduction in emissions of HAP and attendant reduction in risks to human health and the environment, as well as the distribution of these health benefits. We restate the numerous risks to public health and the environment posed by HAP emissions from EGUs. This includes information previously recognized and documented in the statutorily mandated CAA section 112(n)(1) studies, the 2000 Determination, the 2012 MATS Final Rule, and the 2016 Supplemental Finding about the nature and extent of

[28] This action focuses on an analysis of the ''appropriate'' prong of CAA section 112(n)(1)(A). The *Michigan* decision and subsequent EPA actions addressing that decision have been centered on supplementing the EPA's record with a consideration of the cost of regulation as part of the ''appropriate'' aspect of the overall determination. As noted, the 2020 Final Action, while reversing the 2016 Supplemental Finding as to the EPA's determination that it was ''appropriate'' to regulate HAP from EGUs, did not rescind the EPA's prior determination that it was necessary to regulate. See 84 FR 2674 (February 7, 2019) (''CAA section 112(n)(1)(A) requires the EPA to determine that both the appropriate *and* necessary prongs are met. Therefore, if the EPA finds that either prong is not satisfied, it cannot make an affirmative appropriate and necessary finding. The EPA's reexamination of its determination . . . focuses on the first prong of that analysis.''). The ''necessary'' determination rested on two primary bases: (1) in 2012, the EPA determined that hazards to human health and the environment from HAP emissions from EGUs remained that would not be addressed by other CAA requirements in its future year modeling, which accounted for all CAA requirements to that point; and (2) our conclusion that the only way to ensure permanent reductions in U.S. EGU emissions of HAP and the associated risks to public health and the environment was through standards set under CAA section 112. See 76 FR 25017 (May 23, 2011). We therefore continue our focus in this action on reinstating the ''appropriate'' prong of the determination, leaving undisturbed the EPA's prior conclusions that regulation of HAP from EGUs is ''necessary.'' See 65 FR 79830 (December 20, 2000); 76 FR 25017 (May 3, 2011); 77 FR 9363 (February 16, 2012).

[29] The EPA was not challenged on this interpretation in *White Stallion.*

health and environmental impacts from HAP that are emitted by EGUs, as well as additional risk analyses supported by new scientific studies as summarized in the 2022 Proposal. The additional risk screening analyses introduced in the 2022 Proposal on the connection between mercury and heart disease as well as IQ loss in children across the U.S. further support the conclusion that HAP emissions from EGUs pose hazards to public health and the environment warranting regulating under CAA section 112. This section also notes that these effects are not borne equally across the population and that some historically disadvantaged groups are disproportionally affected by EGU HAP emissions. The EPA also discusses the challenges associated with fully quantifying and monetizing the human health and environmental effects associated with HAP emissions. Finally, although under its preferred approach, the EPA finds regulating EGU HAP emissions is appropriate without consideration of non-HAP emissions reductions, the significant health and environmental benefits from such reductions further support the EPA's conclusion.

We then turn in preamble section III.B. to the disadvantages of regulation—the costs associated with reducing EGU HAP emissions and other potential impacts to the sector and the economy associated with MATS. We first consider the compliance costs. We consider whether the actual compliance costs of MATS are consistent with those projected in the 2011 RIA and conclude that the originally projected costs were likely a significant overestimate. We then evaluate the estimated costs in the 2011 RIA against several metrics relevant to the impacts those costs have on the power sector and on electricity consumers (*e.g.,* historical annual revenues, annual capital and production expenditures, impacts on retail electricity prices, and impacts on resource adequacy and reliability). These analyses, whether based on data available in 2012 or based on updated post-promulgation data, all show that the costs of MATS were within the bounds of typical historical fluctuations and that the industry would be able to comply with MATS and continue to provide a reliable source of electricity without price increases that were outside the range of historical variability.

In section III.C of this preamble, we explain why the methodology used in our 2020 Finding was ill-suited to determining whether EGU HAP regulation is appropriate and necessary. The methodology used in our 2020 Finding gave little weight to the volume of HAP that would be reduced. The methodology also gave little weight to the vast majority of the advantages of reducing EGU HAP, including the reduction of risk to sensitive populations, that are extremely difficult or not currently possible to quantify or monetize.

In preamble section III.D, we explain our preferred totality-of-the-circumstances methodology that we use to make the appropriate determination and our application of that methodology. This approach looks to the statute, and particularly CAA section 112(n)(1)(A) and the other provisions in CAA section 112(n)(1), to help identify the relevant factors to weigh and what weight to afford those factors. Under that methodology we weigh the significant health and environmental advantages of reducing EGU HAP, and in particular the benefits to the most exposed and sensitive individuals, against the disadvantages of using productive resources to achieve those benefits—*i.e.,* the effects on the electric generating industry and its ability to provide reliable and affordable electricity. We ultimately conclude that the advantages outweigh the disadvantages whether we look at the record from 2012 or at our new record, which includes an expanded understanding of the health risks associated with HAP emissions and finds that the MATS compliance costs projected in the 2011 RIA were likely significantly overestimated. While we conclude that regulation is appropriate considering the health and environmental impacts posed by HAP emissions alone, we further consider that, if we also account for the non-HAP benefits in our preferred totality-of-the-circumstances approach, such as the benefits (including reduced mortality) of coincidental reductions in PM, NO_2, SO_2, and ozone concentrations that flow from the application of controls on HAP, the balance weighs even more heavily in favor of regulating HAP emissions from coal- and oil-fired EGUs.

In section III.E, we consider an alternative methodology to make the appropriate determination. This alternative methodology draws upon the formal BCA that was included in the 2011 RIA for the 2012 MATS Final Rule.[30] This formal BCA was conducted in a consistent manner with economic principles and governmental guidance documents for economic analysis (*e.g.,* OMB Circular A–4 and EPA's Guidelines for Preparing Economic Analyses) and summarized monetized costs and benefits in its presentation of net benefits.

The formal BCA approach is not our preferred way to consider advantages and disadvantages for the CAA section 112(n)(1)(A) determination because the EPA's current inability to generate a monetized estimate of the full benefits of HAP reductions can lead to an underestimate of the full monetary value of the net benefits of regulation. As discussed below, the EPA has long acknowledged the extreme difficulty of quantifying and monetizing benefits of many HAP emission reductions, a limitation which hinders a formal BCA designed to capture total social benefits and costs; notably, the 2011 RIA discussed unquantified effects in a qualitative way and noted how these benefits and costs would influence the net benefits. A further limitation of a formal BCA in this context is that they may not always account for important distributional effects, such as impacts to the most exposed and most sensitive individuals in a population, and in this instance did not. To the extent that a formal BCA is appropriate for making the CAA section 112(n)(1)(A) determination, however, the formal BCA approach reported in the 2011 RIA and presented here as alternative methodology demonstrates that—even though many of the benefits of HAP emission reductions currently cannot be fully quantified or monetized—the monetized benefits of MATS still outweigh the monetized costs by a considerable margin, whether we look at the 2012 record or at our updated record. We therefore determine that a formal BCA approach also supports a determination that it is appropriate to regulate EGUs for HAP emissions.

[30] We use the term ''formal benefit-cost analysis'' to refer to an economic analysis that attempts to the extent practicable to quantify all significant consequences of an action in monetary terms in order to determine whether an action increases economic efficiency. Assuming that all consequences can be monetized, actions with positive net benefits (*i.e.,* benefits exceed costs) improve economic efficiency. In other words, it is a determination of whether the willingness to pay for an action by those advantaged by it exceeds the willingness to pay to avoid the action by those disadvantaged by it. Measuring willingness to pay in a common metric of economic value, like dollars, is called monetization, and it allows for such comparisons across individuals. When there are technical limitations that prevent certain benefits or costs that may be of significant magnitude from being quantified or monetized, then information is provided describing those potentially important non-monetized benefits or costs. This usage is consistent with the definition of a BCA used in the economics literature and the EPA's Guidelines for Preparing Economic Analyses. Note that regulatory impact analyses more broadly can give appropriate attention to both unquantified and distributional effects, as OMB's Circular A–4 recommends.

In section III.F, we present the Administrator's conclusion that it remains appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs. In sum, the EPA concludes that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs, whether we are applying the preferred totality-of-the-circumstances methodology or the alternative formal benefit-cost approach as described, and whether we are considering only the administrative record as of the original 2012 MATS Final Rule or based on new information made available since that time. The information and data amassed by the EPA over the decades of administrative analysis and rulemaking devoted to this topic overwhelmingly support the conclusion that the advantages of regulating HAP emissions from coal- and oil-fired EGUs outweigh the disadvantages.

A. Public Health and Environmental Hazards Associated With Emissions From EGUs

1. Overview

The administrative record for the MATS rule detailed several hazards to public health and the environment from HAP emitted by EGUs that remained after imposition of the ARP and other CAA requirements. See 80 FR 75028–29 (December 1, 2015). See also 65 FR 79825–31 (December 20, 2000); 76 FR 24976–25020 (May 3, 2011); 77 FR 9304–66 (February 16, 2012). The EPA considered all of this information again in the 2016 Supplemental Finding, noting that this sector represented a large fraction of U.S. emissions of mercury, non-mercury metal HAP, and acid gases. Specifically, the EPA found that even after imposition of the other requirements of the CAA, but absent MATS, EGUs remained the largest domestic source of mercury, HF, HCl, and selenium emissions and among the largest domestic contributors of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium emissions, and that a significant majority of EGU facilities emitted above the major source thresholds for HAP emissions.

Further, the EPA noted that the risks that accrue from these emissions were significant. These hazards include potential neurodevelopmental impairment, increased cancer risks, and contribution to chronic and acute health disorders, as well as adverse impacts on the environment. Specifically, the EPA pointed to results from its revised nationwide Mercury Risk Assessment (contained in the 2011 Final Mercury TSD) [31] as well as an inhalation risk assessment (2011 Non-Hg HAP Assessment) for non-mercury HAP (*i.e.,* arsenic, nickel, chromium, selenium, cadmium, HCl, HF, hydrogen cyanide, formaldehyde, benzene, acetaldehyde, manganese, and lead). The EPA estimated lifetime cancer risks for inhabitants near some coal- and oil-fired EGUs to exceed 1-in-1 million [32] and noted that this case-study-based estimate likely underestimated the true maximum risks for the EGU source category. See 77 FR 9319 (February 16, 2012). The EPA also found that mercury emissions pose a hazard to wildlife, adversely affecting fish-eating birds and mammals, and that the large volume of acid gas HAP associated with EGUs also pose a hazard to the environment.[33] These technical analyses were all challenged in the *White Stallion* case, and the court found that the EPA's risk finding as to mercury alone—that is, before reaching any other risk finding—established a significant public health concern. The court stated that ''EPA's 'appropriate and necessary' determination in 2000, and its reaffirmation of that determination in 2012, are amply supported by EPA's finding regarding the health effects of mercury exposure.'' *White Stallion Energy Center* v. *EPA,* 748 F.3d 1222, 1245 (D.C. Cir. 2014). Additional scientific evidence about the human health hazards associated with exposure to EGU HAP emissions that has been collected since the 2016 Supplemental Finding and is discussed in this section has extended our confidence that these emissions pose an unacceptable risk to people in the U.S., and in particular, to vulnerable, exposed populations.

The 2022 Proposal reviewed the long-standing and extensive body of evidence and presented new scientific information made available since the 2016 Supplemental Finding, which further demonstrated that HAP emissions from coal- and oil-fired EGUs present hazards to public health and the environment and warranted regulation under CAA section 112. In this section of the preamble, the EPA briefly describes the body of evidence related to the public health burden associated with EGU HAP emissions. The EPA describes the reasons why it is extremely difficult to estimate the full health and environmental impacts associated with exposure to HAP. We note the longstanding challenges associated with quantifying and monetizing these effects, which may be permanent and life-threatening and are often distributed unevenly (*i.e.,* concentrated among highly exposed individuals). Despite these challenges, after assessing all the evidence, the EPA concludes again that regulation of HAP emissions from EGUs under CAA section 112 greatly improves public health by reducing the risks of premature mortality from heart attacks, cancer, and neurodevelopmental delays in children, and by helping to restore economically vital ecosystems used for recreational and commercial purposes. Further, we conclude that these public health improvements will be particularly pronounced for certain segments of the population that are especially vulnerable (*e.g.,* subsistence fishers [34] and their children) to impacts from EGU HAP emissions. In addition, the concomitant reductions in co-emitted pollutants will also provide

[31] U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November. EPA–452/R–11–009. Docket ID Item No. EPA–HQ–OAR–2009–0234–19913.

[32] The EPA determined the 1-in-1 million standard was the correct metric in part because CAA section 112(c)(9)(B)(1) prohibits the EPA from removing a source category from the list if even one person is exposed to a lifetime cancer risk greater than 1-in-1 million, and CAA section 112(f)(2)(A) directs the EPA to conduct a residual risk rulemaking if even one person is exposed to a lifetime excess cancer risk greater than 1-in-1 million. See *White Stallion* at 1235–36 (agreeing it was reasonable for the EPA to consider the 1-in-1 million delisting criteria in defining ''hazard to public health'' under CAA section 112(n)(1)(A)).

[33] The EPA had determined it was reasonable to consider environmental impacts of HAP emissions from EGUs in the appropriate determination because CAA section 112 directs the EPA to consider impacts of HAP emissions on the environment, including in the CAA section 112(n)(1)(B) Mercury Study. See *White Stallion* at 1235–36 (agreeing it was reasonable for the EPA to consider the environmental harms when making the appropriate and necessary determination).

[34] Subsistence fishers, who by definition obtain a substantial portion of their dietary needs from self-caught fish consumption, can experience elevated levels of exposure to chemicals that bioaccumulate in fish including, in particular, methylmercury. Subsistence fishing activity can be related to a number of factors including socio-economic status (poverty) and/or cultural practices, with ethnic minorities and tribal populations often displaying increased levels of self-caught fish consumption (Burger *et al.,* 2002, Shilling *et al.,* 2010, Dellinger 2004).

Burger J, (2002). *Daily consumption of wild fish and game: exposures of high-end recreationalists.* International Journal of Environmental Health Research 12:4, p. 343–354.

Shilling F, White A, Lippert L, Lubell M, (2010). *Contaminated fish consumption in California's Central Valley Delta.* Environmental Research 110, p. 334–344.

Dellinger J, (2004). *Exposure assessment and initial intervention regarding fish consumption of tribal members in the Upper Great Lakes Region in the United States.* Environmental Research 95, p. 325–340.

substantial public health and environmental benefits.

We received numerous public comments on the health hazards associated with EGU HAP emissions, and our detailed responses to these comments are presented in section IV.A below and in the 2023 RTC Document. No information received during the comment period has provided data or methods to cause us to change our approach to the consideration of the advantages of the MATS regulation presented in the 2022 Proposal. As a result, this final action will rely upon the same suite of qualitative and quantitative evidence presented in the 2022 Proposal. While the reader is directed to the 2022 Proposal and the supporting 2021 Risk TSD for the complete analyses, we summarize the analyses in subsequent sections of this preamble.

2. Overview of Health Effects Associated With Mercury and Non-Mercury HAP

In calling for the EPA to consider the regulation of HAP from EGUs, the CAA stipulated that the EPA complete 3 studies (all of which were extensively peer-reviewed) exploring various aspects of risk posed to human health and the environment by HAP released from EGUs. The first of these studies, the Utility Study, published in 1998, focused on the hazards to public health specifically associated with EGU-sourced HAP including, but not limited to, mercury. See CAA section 112(n)(1)(A). A second study, the Mercury Study, released in 1997, while focusing exclusively on mercury, was broader in scope including not only human health, but also environmental impacts, and specifically addressed the potential for mercury released from multiple emissions sources (in addition to EGUs) to affect human health and the environment. See CAA section 112(n)(1)(B). The third study, required under CAA section 112(n)(1)(C), the NIEHS Study, submitted to Congress in 1995, considered the threshold level of mercury exposure below which adverse human health effects were not expected to occur. An additional fourth study, the NAS Study, directed by Congress in 1999 and completed in 2000, focused on determining whether a threshold for mercury health effects could be identified for sensitive populations and, as such, presented a rigorous peer review of the EPA's RfD for methylmercury. The aggregate results of these peer-reviewed studies commissioned by Congress as part of CAA section 112(n)(1) supported the determination that HAP emissions from EGUs represented a hazard to public health and the environment that would not be addressed through imposition of the other requirements of the CAA. In the 2 decades that followed, the EPA has continued to conduct additional research and risk assessments and has surveyed the latest science related to the risk posed to human health and the environment by HAP released from EGUs.

Mercury is a persistent and bioaccumulative toxic metal that, once released from power plants into the ambient air, can be readily transported and deposited to soil and aquatic environments where it is transformed by microbial action into methylmercury. See Mercury Study; 76 FR 24976 (May 3, 2011) (2011 NESHAP Proposal); 80 FR 75029 (December 1, 2015) (2015 Proposal). Methylmercury bioaccumulates in the aquatic food web eventually resulting in highly concentrated levels of methylmercury within the larger and longer-living fish (*e.g.,* carp, catfish, trout, and perch), which can then be consumed by humans (NAS Study). As documented in both the NAS Study and the Mercury Study, fish and seafood consumption is the primary route of human exposure to methylmercury,[35] with populations engaged in subsistence-levels of consumption being of particular concern. The NAS Study reviewed the effects of methylmercury on human health, concluding that it is highly toxic to multiple human and animal organ systems. Of particular concern is chronic prenatal exposure via maternal consumption of foods containing methylmercury. Elevated exposure has been associated with developmental neurotoxicity and manifests as poor performance on neurobehavioral tests, particularly on tests of attention, fine motor function, language, verbal memory, and visual-spatial ability. Evidence also suggests potential for adverse effects on the cardiovascular system, adult nervous system, and immune system, as well as potential for causing cancer.[36] Because the impacts of the neurodevelopmental effects of methylmercury are greatest during periods of rapid brain development, developing fetuses, infants, and young children are particularly vulnerable. Children born to populations with high fish consumption (*e.g.,* people consuming fish as a dietary staple) or impaired nutritional status may be especially susceptible to adverse neurodevelopmental outcomes.[37] These dietary and nutritional risk factors are often particularly pronounced in vulnerable communities with people of color and low-income populations that have historically faced economic and environmental injustice and are overburdened by cumulative levels of pollution.

Infants in the womb can be exposed to methylmercury when their mothers eat fish and shellfish that contain methylmercury. This exposure can adversely affect developing fetuses' growing brains and nervous systems. Based on scientific evidence reflecting concern about a range of neurodevelopmental effects seen in children exposed *in utero* to methylmercury, the EPA defined an RfD of 0.0001 mg/kg-day for methylmercury.[38] [39] An RfD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (EPA, 2002).[40]

In addition to the adverse neurodevelopmental effects, the NAS Study indicated that there was evidence that exposure to methylmercury in humans and animals can have adverse effects on both the developing and adult cardiovascular system. Fetal exposure in the womb to methylmercury has been associated with altered blood-pressure and heart-rate variability in children. In adults, dietary exposure to

[35] In light of the methylmercury impacts, the EPA and the Food and Drug Administration have collaborated to provide advice on eating fish and shellfish as part of a healthy eating pattern (*https://www.fda.gov/food/consumers/advice-about-eating-fish*). In addition, states provide fish consumption advisories designed to protect the public from eating fish from waterbodies within the state that could harm their health based on local fish tissue sampling.

[36] National Research Council. 2000. *Toxicological Effects of Methylmercury.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/9899.*

[37] U.S. EPA. 1997. *Mercury Study Report to Congress.* EPA–452/R–97–003 December 1997.

[38] U.S. EPA. 2001. *IRIS Summary for Methylmercury.* U.S. Environmental Protection Agency, Washington, DC. (USEPA, 2001).

[39] At this time, the EPA is conducting an updated methylmercury IRIS assessment and recently released preliminary assessment materials, an IRIS Assessment Plan (IAP) and Systematic Review Protocol for methylmercury. The update to the methylmercury IRIS assessment will focus on updating the quantitative relationship of neurodevelopmental outcomes with methylmercury exposure. As noted in these preliminary assessment materials, new studies are available, since 2001, assessing the effects of methylmercury exposure on cognitive function, motor function, behavioral, structural, and electrophysiological outcomes at various ages following prenatal or postnatal exposure to methylmercury (USEPA, 2001; NAS Study; 84 FR 13286 (April 4, 2019); 85 FR 32037 (May 8, 2020)).

[40] U.S. EPA. 2002. *A Review of the Reference Dose and Reference Concentration Processes.* EPA/630/P–02/002F, December 2002.

methylmercury has been linked to a higher risk of acute myocardial infarction (MI), coronary heart disease, or cardiovascular heart disease. The Mercury Study noted that while methylmercury is not a potent mutagen, it is capable of causing chromosomal damage in a number of experimental systems. Based on limited human and animal data, methylmercury is classified as a ''possible human carcinogen'' by the International Agency for Research on Cancer (IARC, 1993)[41] and in IRIS (USEPA, 2001). However, a quantitative estimate of the carcinogenic risk of methylmercury has not been assessed under the IRIS program at this time. Multiple human epidemiological studies have found no significant association between methylmercury exposure and overall cancer incidence, although a few studies have shown an association between methylmercury exposure and specific types of cancer incidence (*e.g.,* acute leukemia and liver cancer). Finally, some studies have also indicated reproductive and renal toxicity in humans from methylmercury exposure (NAS Study). However, overall, human data regarding reproductive, renal, and hematological toxicity from methylmercury are very limited and are based on studies of the 2 high-dose poisoning episodes in Iraq and Japan or animal data, rather than epidemiological studies of chronic exposures at the levels of interest in this analysis (*i.e.,* in the range of exposure stemming from U.S. EGU mercury emissions).

Along with the human health hazards associated with methylmercury, it is well-established that birds and mammals are also exposed to methylmercury through fish consumption (Mercury Study). At higher levels of exposure, the harmful effects of methylmercury include slower growth and development, reduced reproduction, and premature mortality. The effects of methylmercury on wildlife are variable across species but have been observed in the environment for numerous avian species and mammals including polar bears, river otters, and panthers.

As noted earlier, EGUs are also the largest source of HCl, HF, and selenium emissions, and are a major source of metallic HAP emissions including arsenic, chromium, nickel, cobalt, and others. Exposure to these HAP, depending on exposure duration and levels of exposures, is associated with a variety of adverse health effects. These adverse health effects may include chronic health disorders (*e.g.,* pneumonitis, decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; damage to the kidneys) and alimentary effects (such as nausea and vomiting). As of 2021, 3 of the key metal HAP emitted by EGUs (arsenic, chromium, and nickel) have been classified as human carcinogens, while 3 others (cadmium, selenium, and lead) are classified as probable human carcinogens. Overall (metal and non-metal), the EPA has classified 4 of the HAP emitted by EGUs as human carcinogens and 5 as probable human carcinogens.

In the 2022 Proposal, the EPA also described 3 new screening-level risk assessments completed since the 2016 Supplemental Finding that further strengthened the conclusion that U.S. EGU-sourced mercury represents a hazard to public health. These screening-level assessments were designed as broad bounding exercises intended to illustrate the potential scope and public health importance of methylmercury risks associated with U.S. EGU emissions. The first assessment focused on neurodevelopmental outcomes and estimated the risk of IQ points loss in children exposed *in utero* through maternal fish consumption by the population of general U.S. fish consumers. The range in IQ points lost annually due to U.S. EGU-sourced mercury was estimated at 1,600 to 6,000 points, which is distributed across the population of U.S. children associated with mothers who consume commercially-sourced fish (*i.e.,* bought in a restaurant or food store) or self-caught fish.[42] The other 2 risk assessments focused on the potential for methylmercury exposure to increase the risk of MI mortality in adults (among subsistence fishers and for the general U.S. population). The new assessment estimated that the MI-mortality attributable to U.S. EGU-sourced mercury for the general U.S. population ranges from 5 to 91 excess deaths each year.[43] For those individuals with high levels of methylmercury in their body (*i.e.,* above certain cutpoints), the science suggests that any additional increase in methylmercury exposure will raise the risk of fatal heart attacks.

3. Most Benefits From HAP Reductions Cannot Currently Be Quantified or Monetized

Despite the array of adverse health and environmental risks associated with HAP emissions from U.S. coal- and oil-fired EGUs documented above, it is technically challenging to quantitatively estimate the extent to which EGU HAP emissions will result in adverse effects across the U.S. population absent regulation. In fact, the vast majority of the benefits of reducing HAP currently cannot be quantified or monetized due to data gaps, as discussed more fully below. But that does not mean that these benefits are small, insignificant, or nonexistent. There are numerous unmonetized effects that contribute to additional benefits realized from emissions reductions. These include additional reductions in neurodevelopmental and cardiovascular effects from exposure to methylmercury, adverse ecosystem effects including mercury-related impacts on recreational and commercial fishing, health risks from exposure to non-mercury HAP, and health risks in environmental justice (EJ) subpopulations that face disproportionally high exposure to EGU HAP.

While the EPA was able to partially quantify IQ loss and fatal MI incidence for methylmercury through bounding analyses in the 2021 Risk TSD, there are additional neurodevelopmental and cardiovascular benefits that lacked the necessary data to quantify their incidence. Another challenge was the lack of data required to quantify the number of people impacted. While it is reasonable to assume that some degree of subsistence fishing activity does occur at methylmercury impacted waterbodies, we were unable to quantify the number of impacted subsistence fishers and their children.

There are several challenges to quantifying HAP benefits. Quantifying HAP benefits requires data to characterize the risk and quantify the magnitude of expected (cancer and non-cancer) health outcomes. Unlike criteria pollutants, for which risk is generally more ubiquitous and there is more available data because a greater number of people are impacted, significant HAP impacts are often localized in

[41] International Agency for Research on Cancer (IARC) Working Group on the Evaluation of Carcinogenic Risks to Humans. *Beryllium, Cadmium, Mercury, and Exposures in the Glass Manufacturing Industry.* Lyon (FR): International Agency for Research on Cancer; 1993. (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 58.) Mercury and Mercury Compounds. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK499780.*

[42] Inclusion of 95th percentile confidence intervals for the effect estimate used in modeling this endpoint extends this range to from 80 to 12,600 IQ points lost (reflecting the 5th and 95th percentiles).

[43] Inclusion of 95th percentile confidence intervals for the effect estimate used in modeling MI mortality extends this range to from 3 to 143 deaths (reflecting the 5th percentile associated with the 5 lower bound estimate to the 95th percentile for the upper bound estimate of 91).

communities near sources of HAP where the affected population and data can be more limited. Generally, robust data needed to quantify the magnitude of expected adverse noncancer impacts are lacking, and full quantification of these benefits is made even more challenging by the wide array of HAP and possible HAP effects.

Unlike HAP, criteria pollutants are some of the most studied pollutants in the country with nearly the entire U.S. population exposed to such pollutants. This has resulted in significant data for criteria pollutants thanks to an extensive monitoring network to assess exposure within the population. These data support quantitative estimates of risk (incidence) and allow for greater statistical power to identify effects from criteria pollutants with greater precision through hundreds of epidemiological studies which have been conducted over the past 30 years. Furthermore, those observed effect associations have been corroborated through various experimental animal studies and controlled exposure clinical studies. Monetization of those endpoints characterized in epidemiological studies allows for quantification of benefits.

In contrast to criteria pollutants, HAP are not as well studied, which minimizes our ability to quantify risks and monetize benefits. HAP exposures tend to be more localized. Multiple types of HAP may be emitted from a single source, and individual communities can be impacted by multiple sources with varying HAP emissions from each, such that combinations of individual HAP to which people are exposed across communities tend to be highly varied. Additionally, there are a limited number of monitoring sites across the country for HAP, many of which focus on only a small subset of HAP, which limits the ability to assess exposure in epidemiological studies. Given the general lack of sufficient quality epidemiological studies, the EPA tends to rely on experimental animal studies to identify the range of effects which may be associated with a particular HAP exposure.[44] Human controlled clinical studies are often limited due to ethical barriers (*e.g.,* knowingly exposing someone to a carcinogen). As a result, there is insufficient ability to quantify the actual (incidence of) impacts associated with HAP exposures, which is necessary to provide a foundation for benefits.

Without the estimation of specific incidence of effects there is limited ability to monetize benefits from reducing HAP emissions, because doing so requires first quantifying risk. Further, there is a lack of scientific data available to support estimating the economic value of reducing health and environmental impacts that are not otherwise easily valued. While the EPA can quantify mortality resulting from cancer, it is difficult to monetize the value of reducing an individual's potential cancer risk attributable to a lifetime of HAP exposure. An alternative approach of conducting willingness to pay studies specifically on risk reduction may be possible, but such studies have not yet been pursued.

Congress well understood the challenges in quantifying HAP risks. That is why it fundamentally transformed regulation of HAP in the 1990 CAA Amendments to replace a risk-based approach to establishing standards with a technology-based approach. As discussed in section II.B above, the statutory language in CAA section 112 clearly supports a conclusion that the intended benefit of HAP regulation is a reduction in the volume of HAP emissions to reduce risks from HAP with the goal of protecting even the most exposed and most sensitive members of the population. The statute requires the EPA to move aggressively to quickly reduce and eliminate HAP, placing high value on doing so in the face of uncertainty regarding the full extent of harm posed by hazardous pollutants on human health and the environment. The statute also clearly places great value on protecting the most vulnerable members of the population by instructing the EPA, when evaluating risk in the context of a determination of whether regulation is warranted, to focus on risk to the most exposed and most sensitive members of the population. See, *e.g.,* CAA sections 112(c)(9)(B), 112(f)(2)(B), and 112(n)(1)(C). For example, in evaluating the potential for cancer effects associated with emissions from a particular source category under CAA section 112(f)(2), the EPA is directed by Congress to base its determinations on the maximum individual risk to the most highly exposed individual living near a source. Similarly, in calculating the potential for non-cancer effects to occur, the EPA evaluates the impact of HAP to the most exposed individual and accounts for sensitive subpopulations.

Notably, Congress in CAA section 112 did not require the EPA to quantify risk across the entire population, or to calculate average or ''typical'' risks. The statutory design focusing on maximum risk to individuals living near sources acknowledges the difficulty in enumerating HAP effects, given the large number of pollutants and the uncertainties associated with those pollutants, as well as the large number of sources emitting HAP. However, the fact that many effects cannot currently be quantified does not mean that these effects do not exist or that society would not highly value HAP emission reductions. The EPA has long acknowledged the difficulty of quantifying and monetizing HAP benefits. In March 2011, the EPA issued a report on the benefits and costs of the CAA. This Second Prospective Report[45] is the latest in a series of EPA studies that estimate and compare the benefits and costs of the CAA and related programs over time. Notably, it was the first of these reports to include any attempt to quantify and monetize the impacts of reductions in HAP, and it concentrated on a small case study for a single pollutant, entitled ''Air Toxics Case Study—Health Benefits of Benzene Reductions in Houston, 1990–2020.'' As the EPA summarized in the Second Prospective Report, ''[t]he purpose of the case study was to demonstrate a methodology that could be used to generate human health benefits from CAAA controls on a single HAP in an urban setting, while highlighting key limitations and uncertainties in the process. . . . Benzene was selected for the case study due to the availability of human epidemiological studies linking its exposure with adverse health effects'' (pg. 5–29). In describing the approach, the EPA noted: ''[b]oth the Retrospective analysis and the First Prospective analysis omitted a quantitative estimation of the benefits of reduced concentrations of air toxics, citing gaps in the toxicological database, difficulty in designing population-based epidemiological studies with sufficient power to detect health effects, limited ambient and personal exposure monitoring data, limited data to estimate exposures in some critical microenvironments, and insufficient economic research to support valuation of the types of health impacts often associated with exposure to individual air toxics'' (pg. 5–29). These difficulties have long hindered the EPA's ability to quantify the impacts of HAP controls

[44] For many HAP, while available toxicological and epidemiological data allow the estimation of risks, often the types of representative population level epidemiological data needed to estimate incidence in the exposed populations are lacking.

[45] U.S. EPA Office of Air and Radiation, April 2011. *The Benefits and Costs of the Clean Air Act from 1990 to 2020,* Final Report—Rev. A. Available at *https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.*

and estimate the monetary benefits of HAP reductions.

In preparing the benzene case study for inclusion in the Second Prospective Report, the EPA asked the Advisory Council on Clean Air Compliance Analysis (the Council) to review the approach. In its 2008 consensus advice to the EPA after reviewing the benzene case study,[46] the Council noted that ''Benzene . . . has a large epidemiological database which OAR [the EPA's Office of Air and Radiation] used to estimate the health benefits of benzene reductions due to CAAA controls. The Council was asked to consider whether this case study provides a basis for determining the value of such an exercise for HAP benefits characterization nationwide.'' They concluded:

> As recognized by OAR, the challenges for assessing progress in health improvement as a result of reductions in emissions of hazardous air pollutants (HAPs) are daunting. Accordingly, EPA has been unable to adequately assess the economic benefits associated with health improvements from HAP reductions due to a lack of exposure-response functions, uncertainties in emissions inventories and background levels, the difficulty of extrapolating risk estimates to low doses and the challenges of tracking health progress for diseases, such as cancer, that have long latency periods. . . .
>
> The benzene case study successfully synthesized best practices and implemented the standard damage function approach to estimating the benefits of reduced benzene, however the Council is not optimistic that the approach can be repeated on a national scale or extended to many of the other 187 air toxics due to insufficient epidemiological data. With some exceptions, it is not likely that the other 187 HAPs will have the quantitative exposure-response data needed for such analysis. Given EPA's limited resources to evaluate a large number of HAPs individually, the Council urges EPA to consider alternative approaches to estimate the benefits of air toxics regulations.

In addition to the difficulties noted by the Council, there are other challenges that affect the EPA's ability to fully characterize impacts of HAP on populations of concern, including sensitive groups such as children or those who may have underlying conditions that increase their risk of adverse effects following exposure to HAP. Unlike for criteria pollutants such as ozone and PM, the EPA lacks information from controlled human exposure studies conducted in clinical settings which enable us to better characterize dose-response relationships and identify subclinical outcomes. Also, as noted by the Council and by the EPA itself in preparing the benzene case study, the almost universal lack of HAP-focused epidemiological studies is a significant limitation. Estimated risks reported in epidemiologic studies of fine PM ($PM_{2.5}$) and ozone enable the EPA to estimate health impacts across large segments of the U.S. population and quantify the economic value of these impacts. Epidemiologic studies are particularly well suited to informing air pollution health impact assessments because they report measures of population-level risk that can be readily used in a risk assessment.

However, such studies are infrequently performed for HAP. Exposure to HAP is typically more uneven and more highly concentrated among a smaller number of individuals than exposure to criteria pollutants. Hence, conducting an epidemiologic study for HAP is inherently more challenging. A comparatively small number of people are exposed to HAP, which means an epidemiologic study will frequently lack sufficient statistical power to detect an adverse effect. For example, in the case of mercury, the most exposed and most sensitive members of the population may be both small in number and highly concentrated, such as the subsistence fishers that the EPA has identified as most likely to suffer deleterious effects from U.S. EGU HAP emissions. While it is possible to estimate the potential risks confronting this population in a case-study approach (an analysis that plays an important role in supporting the public health hazard determination for mercury as discussed above in sections III.A.2 and III.A.3), it is not possible to translate these risk estimates into quantitative population-level impact estimates for the reasons described above.

Expressing the economic value of avoided HAP-related cases of morbidity effects is also challenging. The EPA lacks willingness-to-pay information that would support estimating the economic value of avoided HAP impacts for outcomes including heart attacks, IQ loss, and renal or reproductive failure. In addition, the absence of socio-demographic data, such as the number of affected individuals comprising sensitive subgroups further limits the ability to monetize HAP-impacted effects. All of these deficiencies impede the EPA's current ability to quantify and monetize HAP-related impacts, even though those impacts may be severe and/or impact significant numbers of people.

Though it may be difficult to quantify and monetize most HAP-related health and environmental benefits, this does not mean such benefits are small. The nature and severity of effects associated with HAP exposure, ranging from lifelong cognitive impairment to cancer to adverse reproductive effects, implies that the economic value of reducing these impacts would be substantial if they could be quantified and monetized completely. By extension, it is reasonable to expect both that reducing HAP-related incidence affecting individual endpoints would yield substantial benefits if fully quantified and monetized, and moreover that the total societal impact of reducing HAP would be quite large when evaluated across the full range of endpoints. In judging it appropriate to regulate based on the risks associated with HAP emissions from U.S. EGUs, the EPA is placing weight on the likelihood that these effects are substantial, as supported by the health evidence. The EPA's new screening-level analyses presented in the 2021 Risk TSD for this action illustrate this point. Specifically, in exploring the potential for MI-related mortality risk attributable to mercury emissions from U.S. EGUs, the EPA's upper bound estimate is that these emissions (*i.e.,* counterfactual EGU emissions in 2016 without MATS) may contribute to as many as 91 additional premature deaths each year. The value society places on avoiding such severe effects is very high; as the EPA illustrates in the valuation discussion in the 2021 Risk TSD, the benefit of avoiding such effects could approach $720 million per year. Similarly, for IQ loss in children exposed *in utero* to U.S. EGU-sourced mercury, our upper bound estimate approaches 6,000 IQ points lost which could translate into a benefit approaching $50 million per year.

These estimates are intended to illustrate the point that the HAP impacts are large and societally meaningful, but not to suggest that they are even close to the full monetized benefits of reducing HAP. There are many other unquantified effects of reducing mercury (*e.g.,* EJ impacts, subsistence fisher impacts, and ecological impacts, among others) and non-mercury HAP (*e.g.,* reduced cancer risks, environmental impacts, and disproportionate exposures) that have substantial value to society. As described above, mercury alone is associated with a host of adverse health and environmental effects. The statute clearly identifies this basket of effects as a significant concern in directing the EPA to study them specifically. If the

[46] U.S. EPA Advisory Council on Clean Air Act Compliance Analysis, Review of the Benzene Air Toxics Health Benefits Case Study. July 11, 2008. Available at *https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000ZYP.PDF?Dockey=P1000ZYP.PDF.*

EPA were able to account for all of these effects in our quantitative estimates, the true benefits of MATS would be far clearer. However, available data and methods currently preclude a full quantitative accounting of the impacts of reducing HAP emissions from U.S. EGUs and a monetization of these impacts.

The HAP-related legislative history for the 1990 Amendments includes little discussion of the monetized benefits of HAP, perhaps due to these attendant difficulties. When such monetized benefits were estimated in several outside reports submitted to Congress before passage of the 1990 Amendments, the estimates were based on reduced cancer deaths and the value of the benefits that are quantified were estimated to be small as compared to the estimated costs of regulating HAP emissions under CAA section 112. See, *e.g., A Legislative History of the Clean Air Act Amendments of 1990,* Vol. I at 1366–67 (November 1993) and *id.* at 1372–73. Despite the apparent disparity between benefits that could be monetized and estimated costs, Congress still enacted the revisions to CAA section 112, requiring regulation of HAP in most instances based on Congress' determination of risk and without first requiring the EPA to assess risk. Thus, it is reasonable to conclude that Congress found HAP emissions to be worth regulating even without evidence that the monetized benefits of doing so were greater than the costs. The EPA believes this stems from the value that the statute places on reducing HAP regardless of whether the benefits of doing so can be quantified or monetized, and the statute's purpose of protecting even the most exposed and most sensitive members of the population.

4. Characterization of HAP Risk Relevant to Consideration of EJ

In assessing the adverse human health effects of HAP emissions from EGUs, we note that these effects are not borne equally across the population, and that some of the most exposed individuals and subpopulations—protection of whom is, as noted, of particular concern under CAA section 112—are people of color and/or low-income populations. The EPA defines EJ as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.* The EPA further defines the term fair treatment to mean that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies. *Id.*

In the context of MATS, exposure scenarios of clear relevance from an EJ perspective include the full set of subsistence fisher scenarios included in the watershed-level risk assessments completed for the rule. Subsistence fisher populations are potentially exposed to elevated levels of methylmercury due to their elevated levels of self-caught fish consumption which, in turn, are often driven either by economic need (*i.e.,* poverty) and/or cultural practices (*i.e.,* longstanding traditions of fishing and fish consumption are central to many Tribes' cultural identity). In the context of MATS, we completed watershed-level assessments of risks for a broad set of subsistence fisher populations covering 2 health endpoints of clear public health significance including: (a) neurodevelopmental effects in children exposed prenatally to methylmercury (the methylmercury-based RfD analysis described in the 2011 Final Mercury TSD), and (b) potential for increased MI-mortality risk in adults due to methylmercury exposure (see section III.A.3.b in the 2022 Proposal).

The general subsistence fisher population that was evaluated nationally for both analyses was not subdivided by socioeconomic status, race, or cultural practices.[47] Therefore, the risk estimates derived do not fully inform our consideration of EJ impacts, although the significantly elevated risks generated for this general population are clearly relevant from a public health standpoint. However, the other, more differentiated subsistence fisher populations, which are subdivided into smaller targeted communities, are relevant in the EJ context and in some instances were shown to have experienced levels of risk significantly exceeding those of the general subsistence fisher population, as noted in section III.A.3.b in the 2022 Proposal.

In particular, for the watershed analysis focusing on the methylmercury RfD-based analysis (*i.e.,* neurodevelopmental risk for children exposed prenatally), while the general female fisher scenario suggested that modeled exposures (from U.S. EGU-sourced mercury alone) exceeded the methylmercury RfD in approximately 10 percent of the watersheds modeled (2011 Final Mercury TSD, Table 2–6), for low-income Black subsistence fisher females in the Southeast, modeled exposures exceeded the RfD in approximately greater than 25 percent of the watersheds. These results suggest a greater potential for adverse effects in low-income Black populations in the Southeast. Similarly, while the general subsistence fisher had exposure levels suggesting an increased risk for MI-mortality risk in 10 percent of the watersheds modeled, 3 sub-populations were shown to be even further disadvantaged (low-income White and Black populations in the southeast and tribal populations near the Great Lakes). Both of these results (the neurodevelopmental RfD-based analysis and the analysis of increased MI-mortality risk) suggest that subsistence fisher populations that are racially or culturally, geographically, and income-differentiated could experience elevated risks relative to not only the general population but also the population of subsistence fishers generally. We think that opportunities to remove systemic barriers to underserved communities are relevant considerations in determining the benefits of regulating EGU HAP.

5. Overview of Health and Environmental Effects Associated With Non-HAP Emissions From EGUs

Alongside the HAP emissions enumerated above, U.S. EGUs also emit a substantial quantity of criteria pollutants, including direct $PM_{2.5}$, nitrogen oxides (NO_X) (including NO_2), and SO_2, even after implementation of the ARP and numerous other CAA requirements designed to control criteria pollutants. In the 2011 RIA, for example, the EPA estimated that U.S. EGUs would emit 3.4 million tons of SO_2 and 1.9 million tons of NO_X in 2015 prior to implementation of any controls under MATS (see Table ES–2). These EGU SO_2 emissions were approximately twice as much as all other sectors combined (EPA SO_2 Integrated Science Assessment, 2017).[48] These pollutants contribute to the formation of $PM_{2.5}$ and ozone criteria pollutants in the atmosphere, the exposure to which is causally linked with a range of adverse

[47] Note that the RfD-based analysis described in the 2011 Final Mercury TSD and referenced here addressed the potential for neurodevelopmental effects in children and therefore focused on the ingestion of methylmercury by female subsistence fishers. By contrast, the analysis focusing on increased MI-mortality risk for subsistence fishers described in the 2021 Risk TSD and referenced here was broader in scope and encompassed all adult subsistence fishers.

[48] U.S. EPA. *Integrated Science Assessment for Sulfur Oxides—Health Criteria* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–17–451, December 2017.

public health effects. SO_2 both directly affects human health and is a precursor to $PM_{2.5}$. Short-term exposure to SO_2 causes respiratory effects, particularly among adults with asthma. SO_2 serves as a precursor to $PM_{2.5}$, the exposure to which increases the risk of premature mortality among adults, lung cancer, new onset asthma, exacerbated asthma, and other respiratory and cardiovascular diseases. Likewise, EGU-related emissions of NO_X will adversely affect human health in the form of respiratory effects including exacerbated asthma. NO_X is a precursor pollutant to both $PM_{2.5}$ and ground-level ozone. Exposure to ozone increases the risk of respiratory-related premature death, new onset asthma, exacerbated asthma, and other outcomes. Fully accounting for the human health impacts of reduced EGU emissions under MATS entails quantifying both the direct impacts of HAP as well as the avoided premature deaths and illnesses associated with reducing these co-emitted criteria pollutants. Similarly, U.S. EGUs emit substantial quantities of CO_2, a powerful greenhouse gas (GHG): the EPA estimated these emissions at 2.23 million metric tpy in 2015 (2011 RIA, Table ES–2). The environmental impacts of GHG emissions are accounted for through the social cost of carbon, which can be used to estimate the benefits of emissions reductions projected in the 2011 RIA to occur under MATS.

Not all of the non-HAP benefits of MATS were quantified or monetized in the 2011 RIA. However, the EPA thoroughly documented these potential effects and identified those for which quantification and/or monetization was possible. Specifically, the EPA calculated the number and value of avoided $PM_{2.5}$-related impacts, including 4,200 to 11,000 premature deaths, 4,700 nonfatal heart attacks, 2,600 hospitalizations for respiratory and cardiovascular diseases, 540,000 lost work days, and 3.2 million days when adults restrict normal activities because of respiratory symptoms exacerbated by $PM_{2.5}$ (2011 RIA, p. ES–3). We also estimated substantial additional health improvements for children from reductions in upper and lower respiratory illnesses, acute bronchitis, and asthma attacks. In addition, we included in our monetized benefits estimates the effect from the reduction in CO_2 emissions resulting from this final action, based on the interagency SC–CO_2 estimates. These benefits stemmed from imposition of MATS and would be coincidentally realized alongside the HAP benefits.

6. Summary of Public Health and Environmental Hazards Associated With Emissions From EGUs

The EPA finds that the evidence provided in this section of the preamble, informed where possible with new scientific evidence available since the publication of the 2016 Supplemental Finding, once again demonstrates that HAP released from U.S. EGUs represent a significant public health hazard absent regulation under CAA section 112. As noted earlier, the EPA found that even after imposition of the other requirements of the CAA, EGUs were the largest domestic source of mercury, HF, HCl, and selenium and among the largest domestic contributors of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium. The EPA has documented a wide range of adverse health effects in children and adults associated with mercury including, in particular, neurodevelopmental effects in children exposed prenatally (*e.g.,* IQ, attention, fine motor-function, language, and visual spatial ability) and a range of cardiovascular effects in adults including fatal MI and non-fatal IHD. Non-mercury HAP have also been associated with a wide range of chronic health disorders (*e.g.,* decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; and damage to the kidneys). Furthermore, 3 of the key metal HAP emitted by EGUs (arsenic, chromium, and nickel) have been classified as human carcinogens and there is evidence to suggest that, prior to MATS, emissions from these sources had the potential to result in cancer risks greater than 1-in-1 million.

Further, this section briefly describes the results from several new screening-level risk assessments considering mercury from domestic EGU sources. These risk assessments focused on 2 broad populations of exposure: (a) subsistence fishers exposed to mercury through self-caught fish consumption within the continental U.S. and (b) the general U.S. population exposed to mercury through the consumption of commercially-sourced fish (*i.e.,* purchased from restaurants and food stores). The results of these screening-level risk assessments are useful for informing our understanding about the potential scope and public health importance of these impacts, but remaining uncertainties prohibit precise estimates of the size of these impacts currently. For example, numerous studies considering multiple, large cohorts have shown that people exposed to high amounts of mercury are at higher risk of fatal and non-fatal cardiovascular disease. While U.S. EGUs are only one of multiple global sources that contribute to this mercury exposure, the EPA's screening analysis suggests the potential for U.S. EGU emissions of mercury to contribute to premature mortality in the general U.S. population.

Furthermore, as part of the subsistence fisher analyses, we included scenario modeling for a number of EJ-relevant populations showing that several populations (including low-income Blacks and Whites in the Southeast and tribal populations near the Great Lakes) had risk levels that were significantly above the general subsistence fisher population modeled for the entire U.S. As noted earlier, the EPA believes that Congress intended in CAA section 112 to address risks to the most exposed and most sensitive members of the public. These additional risk assessments suggest that there are populations that are particularly vulnerable to EGU HAP emissions, including populations of concern from an EJ standpoint.

MATS has played a critical role in reducing the significant volume and risks associated with EGU HAP emissions discussed above. Mercury emissions declined by 86 percent, acid gas HAP by 96 percent, and non-mercury metal HAP by 81 percent between 2010 (pre-MATS and certain market conditions) and 2017. See Table 4 at 84 FR 2689 (February 7, 2019). MATS is the only Federal requirement that guarantees a level of HAP control from EGUs. At the same time, the concomitant reductions in CO_2, NO_X, and SO_2, also provide substantial public health and environmental benefits. Given the numerous and important public health and environmental risks associated with EGU emissions, the EPA again concludes that the advantages of regulating HAP emissions from this sector are significant, and that is true whether we look at the HAP emissions reductions alone or the concomitant reduction in non-HAP emissions.

B. Cost Associated With Regulating EGUs for HAP

1. Introduction

In this action, the EPA considers the 2011 projected costs comprehensively, examining them in the context of the effect of those expenditures on the economics of power generation more broadly, the reliability of electricity, and the cost of electricity to consumers. These metrics are relevant to our weighing exercise because they give us a more complete picture of the

disadvantages to producers and consumers of electricity imposed by this regulation.

Similar to the EPA's consideration of benefits of regulation, our consideration of costs and disadvantages is specific to the unique charge in section 112(n)(1)(A) to determine whether EGU HAP regulation is appropriate and necessary, and the Supreme Court's direction in *Michigan* v. *EPA.* As the Court recognized, the EPA has discretion ''to decide (as always within the limits of reasonable interpretation) how to account for cost.'' *Michigan,* 135 S. Ct. at 2711. To reasonably exercise this discretion, the EPA considered the language and context of CAA section 112(n)(1) as well as the general goals of section 112 of the CAA. We note as well that the EPA routinely uses other methods to consider costs under other provisions of the statute, and that we are not in this action suggesting that the analysis appropriate to 112(n)(1)(A) finding is appropriate for any other statutory provisions.

As discussed in more detail below, the 2022 Proposal analyzed new cost information indicating that the cost projection used in the 2011 RIA and the 2016 Supplemental Finding likely significantly overestimated the actual costs of compliance of MATS by an amount in the billions of dollars. Specifically, with the benefit of hindsight, we now know that the EGU sector installed far fewer controls to comply with the HAP emissions standards than projected; certain modeling assumptions, if updated with newer information, would have resulted in a lower cost estimate; unexpected advancements in technology occurred; and the country experienced a dramatic increase in the availability of comparatively inexpensive natural gas. All of these factors likely resulted in a significantly lower actual cost of compliance than the EPA's projected estimates in 2011.

The EPA received numerous public comments on these analyses, and our detailed responses to these comments are presented in section IV.B below and in the 2023 RTC Document. No information received during the comment period has provided new data or methods to cause us to change the analytical approaches used in the 2022 Proposal to consider the costs of the MATS regulation. As a result, this final action will rely upon the same suite of qualitative and quantitative evidence presented in the 2022 Proposal. While the reader is directed to the 2022 Proposal and the supporting Cost TSD for the complete analyses, the EPA summarizes the analyses in subsequent sections of this preamble.

Additionally, in response to several commenters' suggestion for the EPA to consider employment impacts from EGU HAP regulation, the EPA notes that the 2011 RIA did consider employment impacts. As explained in further detail in section IV.B.2 below, the 2011 RIA projected both employment gains and losses as a result of the regulation but that the net projected change in employment due to MATS was ambiguous. Nonetheless, the EPA has taken such employment impacts into consideration in this final action and finds that they do not play a significant role in the EPA's decision making.

2. Compliance Cost Projections in the 2011 RIA Were Likely Significantly Overestimated

In evaluating the costs and disadvantages of MATS, the EPA begins with the costs to the power industry of complying with MATS. This assessment uses a sector-level (or system-level) accounting perspective to estimate the cost of MATS, looking beyond just pollution control costs for directly affected EGUs to include incremental costs associated with changes in fuel supply, construction of new capacity, and costs to non-MATS units that were also projected to adjust operating decisions as the power system adjusted to meet MATS requirements. Such an approach is warranted due to the nature of the power sector, which is a large, complex, and interconnected industry.

Using this broad view, the 2011 RIA projected that the compliance cost of MATS would be $9.6 billion per year in 2015.[49] However, there are inherent limits to what can be predicted *ex ante.* The cost estimate was made 5 years prior to full compliance with MATS, and stakeholders, including a leading power sector trade association, have indicated that our initial cost projection significantly overestimated actual costs expended by industry. Independent analyses provided to the EPA indicated that we may have overestimated the cost of MATS by billions of dollars per year. Moreover, there have been significant changes in the power sector in the time since MATS was promulgated that were not anticipated in either EPA or U.S. Energy Information Administration (EIA) projections at the time.[50] Entirely outside of the realm of EPA regulation, there were dramatic shifts in the cost of natural gas and renewables, as well as the implementation of new state policies and Federal tax incentives, which have also further encouraged construction of new renewable units. These have led to significantly faster and greater than anticipated retirements of coal-fired generating units.

While there are significant challenges to producing an *ex post* cost estimate that provides an apples-to-apples comparison to our 2011 cost projections, due to the complex and interconnected nature of the industry and the related difficulty of attributing costs to MATS or other factors, we approximated the extent of our overestimate in the 2022 Proposal. In the proposed rule, we reviewed a suite of quantitative and qualitative updates and considered studies that were performed by outside entities and concluded that the available *ex post* evidence points to significantly lower costs of compliance for the power sector under MATS than suggested by the *ex ante* projections in the 2011 RIA. The proposal explained that there are numerous reasons for this, and chief among them is the fact that the natural gas industry has undergone profound change in recent years.

As detailed in the 2022 Proposal and supporting Cost TSD, following the promulgation of MATS, natural gas supply increased substantially, leading to dramatic price decreases that resulted in major shifts in the economics of fossil fuel-fired electric generating technologies. The 2011 RIA modeling did not fully anticipate this historic change in natural gas supply and the related decrease in natural gas prices. As a result of this and other fundamental changes in the industry, we see a very different pattern of control installations than was projected:[51]

- 21 percent less capacity of dry FGD than projected;
- 64 percent less capacity of dry sorbent injection (DSI) than projected;
- 3 percent less capacity of activated carbon injection than projected;
- 69 percent less capacity of fabric filters than projected; and

[49] All costs were reported in 2007 dollars.

[50] In 2009, coal-fired generation was by far the largest source of utility scale generation, providing more power than the next two sources (natural gas and nuclear) combined. By 2016, natural gas had passed coal-fired generation as the leading source of generation in the U.S. While natural gas-fired generation, nuclear generation and renewable generation have all increased since 2009, coal-fired generation has significantly declined.

[51] As discussed in the proposal, although we assumed that all pollution controls of these types that were installed between 2013 and 2016 were singularly attributable to MATS requirements and we therefore attributed all costs associated with controls of these types to MATS in this analysis, this is a conservative assumptions given that some of the observed installations likely occurred in response to other regulations to control criteria air pollutants.

• Likely fewer electrostatic precipitator (ESP) and scrubber control upgrades than projected.

Installation and operation of these controls together were responsible for approximately 70 percent of the projected annual compliance costs in the 2011 RIA. Because so many projected controls were not installed, we know that the control-related costs were likely significantly overestimated. By simply comparing between projected and installed controls, we found in the 2022 Proposal that the projected control-related costs for 2015 of about $7 billion were likely overestimated by $2.2 to $4.4 billion, and possibly more.

In addition, since promulgation of MATS, the EPA has found it necessary to update some of the assumptions used in the modeling that informed the RIA cost estimate, in order to capture the most recently available information and best reflect the current state of the power sector.

Specifically:

• HCl emissions for EGUs burning subbituminous and lignite coals are much lower than assumed in 2011, reducing the number of controls necessary for compliance than was projected in 2011;

• DSI controls require less sorbent than assumed in 2011, lowering the operating cost of these controls, and other lower-cost sorbents are likely available; and

• The assumed cost of ESP upgrades in the 2011 analysis was likely much higher than the actual cost of these upgrades.

While not quantified here, the reductions in cost and advances in performance of control technology between the time of the EPA's 2011 modeling and implementation of the rule would, if quantified, likely add to the $2.2 to $4.4 billion overestimate for pollution control costs.

Three studies submitted to the EPA during earlier rulemakings support this finding that the 2011 RIA cost projection was significantly overestimated:

• Andover Technology Partners estimated that the actual annual costs of compliance with MATS were approximately $2 billion and stated that the 2011 RIA may have overestimated annual compliance costs by approximately $7 billion.

• M.J. Bradley & Associates used information from the EIA to estimate that owners and operators of coal-fired EGUs incurred total capital expenditures on environmental retrofits of $4.45 billion from December 2014 to April 2016. For comparison, the estimated total upfront (not annualized) capital expenditures underpinning the 2011 RIA annual compliance cost estimate is about $36.5 billion, which is more than eight times higher than the M.J. Bradley & Associates estimate of actual total capital expenditures.

• Edison Electric Institute, the association that represents U.S. investor-owned electric companies, estimated cumulative costs incurred by the industry in response to MATS of $18 billion over a 7-year period, suggesting an annual amount of about $2.6 billion (or, as the EPA notes in the 2022 Proposal, is about $7 billion less than the 2011 RIA projected).

The EPA received no data or analysis during the public comment period that alters the conclusions made in the 2022 Proposal based on the evidence presented in the proposed rule and summarized here. We thus finalize here our conclusion that the available *ex post* evidence points to a power sector that incurred significantly lower costs of compliance obligations under MATS than anticipated based on the *ex ante* projections when the rule was finalized in 2012. This overestimate was significant—for just one part of the original compliance cost estimate, the EPA was able to quantify a range of at least $2.2 to $4.4 billion in projected costs related to the installation, operation, and maintenance of controls which were not expended by industry. This projected overestimation is limited to these costs; it does not account for other ways in which the rule's costs were likely overestimated, such as advances in control technologies that made control applications less expensive or more efficient at reducing emissions. The other studies conducted by stakeholders asserted there were even greater differences between projected and actual costs of MATS, and further support the EPA's conclusions that the 2011 cost projections were likely significantly overestimated.

3. Evaluation of Metrics Related to MATS Compliance

The EPA next examines the *projected* cost of MATS—both total cost and specific types of costs—and we use sector-level metrics that put those cost estimates in context with the economics of the power sector. The reason we examine these metrics is to better understand the disadvantages that expending these costs had on the electricity generating industry and the public more broadly, and to understand these costs in the context of the sector that incurred them. Additionally, these metrics are relevant measures for evaluating costs to the utility sector in part because they are the types of metrics used in regulatory analysis as well as considered by the owners and operators of EGUs themselves.

For purposes of these analyses, the EPA uses the 2011 RIA *ex ante* projections, keeping in mind conclusions derived from newer *ex post* analyses which indicate the 2011 RIA cost projections were likely significantly overestimated. Specific to the power sector, we evaluate the projected costs of the rule relative to revenues from electricity sales across nearly 20 years. We compare the projected expenditures required under the rule with historic expenditures by the industry over the same time period. We also look at the projected effects of MATS on retail electricity prices and power sector generating capacity. Specifically, we examined the 2011 projected cost in the context of the following four metrics: compliance costs as a percent of power sector sales, compliance expenditures compared to the power sector's annual expenditures, impact on retail price of electricity, and impact on power sector generating capacity.

As discussed in the 2022 Proposal and presented in the Cost TSD, based on the 2011 RIA, the total projected cost of the MATS rule to the power sector in 2015 represented between 2.7 and 3.0 percent of annual electricity sales when compared to years from 2000 to 2019, a small fraction of the value of overall sales (and even smaller when one takes into account that the 2011 RIA projections were likely significantly overestimated). Looking at capital expenditures, the EPA demonstrated that the projected MATS capital expenditures in 2015 represented between 3.6 and 10.4 percent of total annual power sector capital expenditures when compared to years surrounding the finalization of the MATS rule. Such an investment by the power sector would comprise a small percentage of the sector's historical annual capital expenditures on an absolute basis and also would fall within the range of historical variability in such capital expenditures. Using data from U.S. Census Bureau, for example, the year-to-year variability in annual power sector capital expenditures ranged from a decrease in capital expenditures of $19.5 billion to an increase of $23.4 billion over this time (see Table A–5 of the Cost TSD). Similarly, the EPA demonstrated that the projected capital and operating expenditures in 2015 represented between 4.3 and 6.2 percent of total annual power sector capital and operating expenditures over 2000 to 2019 and is well within the substantial range of annual variability. Using

capital expenditure data from U.S. Census Bureau and production expenditure data from Hitachi Powergrids Velocity Suite, for example, the year-to-year variability in annual power sector capital and operating expenditures ranged from a decrease of $32.8 billion to an increase of $27.5 billion over this time (see Table A–6 of the Cost TSD). This action's analysis indicating that far fewer controls were installed than the EPA had projected is particularly relevant to considering our findings as to this metric; with the overestimation of capital expenditures in mind, actual investments by the power sector to comply with MATS would have comprised an even smaller percentage of historical annual capital expenditures.

With respect to impacts on the wider public, the EPA examined the projected impacts on average retail electricity prices and found the modest increases—which, like overall compliance costs, are also likely to have been significantly overestimated—to be within the range of historical variability. Additionally, these small retail price impacts would have occurred during a period in which national average retail electricity prices had fallen from 9.10 cents per kilowatt-hour in 2012 to 8.68 cents per kilowatt-hour in 2019 (see Table A–7 of the Cost TSD). Finally, previous analysis indicated that the vast majority of the generation capacity in the power sector would remain operational and that the power sector would be able to comply with the MATS requirements while maintaining its ability to generate, transmit, and distribute reliable electricity at reasonable cost to consumers. We have seen no evidence to contradict those findings.

The EPA is finalizing the determination that each of these analyses are appropriate bases for evaluating the costs conferred by the MATS-related projected compliance expenditures. As we note above, even though the projected costs we use in this analysis are likely significantly overestimated, we find that they are still relatively small when placed in the context of the economics of the industry, and well within historical variations. Again, we received no data or analysis during the public comment period that alters the conclusions made in the 2022 Proposal based on the evidence just presented.

4. Other Cost Considerations

We also reaffirm our previous findings regarding the costs of mercury controls, consistent with the instruction from the statute to study the availability and cost of such controls in CAA section 112(n)(1)(B). 80 FR 75036–37 (December 1, 2015). We similarly reaffirm our previous records and findings regarding the cost of controls for other HAP emissions from EGUs, and the cost of implementing the utility-specific ARP, which Congress wrote into the 1990 CAA Amendments and implementation of which Congress anticipated could result in reductions in HAP emissions. *Id.* With respect to the costs of technology for control of mercury and non-mercury HAP, the record evidence shows that in 2012 controls were available and routinely used and that control costs had declined considerably over time. *Id.* at 75037–38. With regard to the ARP, industry largely complied with that rule by switching to lower-sulfur coal rather than installing more costly pollution controls, and subsequently the actual costs of compliance were substantially lower than projected. Though the reasons for discrepancies between projected and actual costs are different for MATS than they were for the ARP, as discussed in section III.B.2 above, the newer information examined as part of this action demonstrates that the projected cost estimates for MATS were also likely significantly overestimated.

5. Conclusion

Section III.B.2 summarizes our finding that the 2011 RIA costs were likely significantly overestimated. Section III.B.3 summarizes our evaluation of the cost metrics related to MATS compliance, and concludes that even though the cost estimates we used in this analysis were likely significantly overestimated, they were relatively small when placed in the context of the industry's revenues and expenditures, and well within historical variations. Similarly, we conclude that the projected impact on average retail electricity price was within the range of historical variability. We also note in section III.B.3 that previous analysis indicated that the vast majority of the generation capacity in the power sector would remain operational and that the power sector would be able to comply with the MATS requirements while maintaining its ability to generate, transmit, and distribute reliable electricity at reasonable cost to consumers. We have seen no evidence to contradict those findings. In section III.B.4, we reaffirm additional cost considerations regarding the availability and cost of control technologies discussed in earlier rulemakings.

C. Revocation of the 2020 Final Action

We are revoking the 2020 Final Action because we find that the framework used to consider cost in 2020 was ill-suited to making the appropriate and necessary determination in the context of CAA section 112(n)(1)(A) specifically and the CAA section 112 program generally. The 2020 Final Action focused on a comparison of costs to *monetized* HAP benefits, which was not required nor supported by the statutory text of CAA section 112(n)(1)(A) and legislative history. Accordingly, we exercise our discretion to adopt a different approach. We also disagree with the conclusions presented in the 2020 Final Action as to the 2016 Supplemental Finding's two approaches.

The 2020 Final Action established a three-step framework for making the appropriate and necessary determination, which it deemed at the time as the appropriate method for the EPA to determine whether it was appropriate and necessary to regulate EGUs under CAA section 112(n)(1)(A). Under this framework, the EPA first ''compare[d] the monetized costs of regulation against the subset of HAP benefits that could be monetized''; second, it ''consider[d] whether unquantified HAP benefits may alter that outcome''; and third ''the EPA consider[d] whether it is appropriate, notwithstanding the above, to determine that it is 'appropriate and necessary' to regulate EGUs under CAA section 112(n)(1)(A) out of consideration for the PM co-benefits that result from such regulation.'' 85 FR 31302 (May 22, 2020).

Applying the first part of the framework, the EPA noted that the costs of regulation estimated in the 2011 RIA were disproportionately higher—by three orders of magnitude—than the *monetized* HAP benefits, and concluded ''[t]hat does not demonstrate 'appropriate and necessary.' '' *Id.* Under the framework's second inquiry, the EPA determined that the unquantified HAP benefits, even if monetized, were unlikely to alter its conclusion under the first part of the framework. *Id.;* see also 85 FR 31304 (noting that ''valuing HAP-related morbidity outcomes would not likely result in estimated economic values similar to those attributed to avoiding premature deaths''). Finally, applying the third part of its framework, the EPA noted that nearly all of the monetized benefits of MATS as reflected in the 2011 RIA were derived from PM benefits. See 85 FR 31302–03 (May 22, 2020). The EPA then posited that, ''[h]ad the HAP-specific benefits of MATS been closer to the costs of regulation, a different question might have arisen as to whether the Administrator could find that co-

benefits legally form part of the justification for determination that regulation of EGUs under CAA section 112(d) is appropriate and necessary.'' See 85 FR 31303 (May 22, 2020). However, because of the factual scenario presented in the record, the EPA in the 2020 Final Action stated that ''[t]he EPA does not need to, and does not, determine whether that additional step would be appropriate . . . given that the monetized and unquantified HAP-specific benefits do not come close to a level that would support the prior determination.'' *Id.* In conclusion, the EPA stated that ''[u]nder the interpretation of CAA section 112(n)(1)(A) that the EPA adopts in this action, HAP benefits, as compared to costs, must be the primary question in making the 'appropriate and necessary' determination.'' *Id.*

We find that this three-step framework is an unsuitable approach to making the appropriate and necessary determination under CAA section 112(n)(1)(A) because it places undue primacy on those HAP benefits that have been monetized, and fails to consider critical aspects of the inquiry posed to the EPA by Congress in CAA section 112(n)(1). While the 2020 Final Action purported to consider unquantified HAP benefits at step 2, it failed to square that consideration with the difficulty of monetizing and the potential magnitude of these benefits, as discussed in section III.A.3 above, and with the statutory structure. Moreover, the 2020 three-step framework also did not in any meaningful way grapple with the bases upon which the EPA had relied to design the 2016 preferred approach, as discussed above, including the broad statutory purpose of CAA section 112 to reduce the volume of HAP emissions with the goal of reducing the risk from HAP emissions to a level that is protective of even the most exposed and most sensitive subpopulations; the fact that we rarely can fully characterize or quantify risks at a nationwide level; the fact that except for one of the many health endpoints for only one of the many HAP emitted from EGUs, the EPA lacked the information necessary to monetize any benefit of reductions in HAP emissions; and the fact that health endpoints and other key benefits may be highly significant even if they cannot currently be fully quantified or monetized. The sole rationale provided in the 2020 Final Action for rejecting the relevance of the statute's clear purpose as evinced in the broader CAA section 112 program and reflected in the provisions of CAA section 112(n)(1) was that CAA section 112(n)(1)(A) is a separate provision and threshold determination. See 85 FR 31293–94 (May 22, 2020). But we do not think it is sensible to view the statute's direction to the EPA to make a separate determination as to EGUs as an invitation to disregard the statutory factors of CAA section 112(n)(1),the greater statutory context in which that determination exists, and the urgency with which Congress directed the EPA to regulate HAP emissions in the 1990 amendments, and we do not think that the 2020 Final Action provided an adequately reasoned basis for abandoning the interpretation and assessment provided in the 2016 Supplemental Finding. And in any event, we believe the methodology we are finalizing in this action is better suited to making the statutory finding than the 2020 framework.

In the 2020 rulemaking, the EPA did not explain its rationale for its decision to anchor the appropriate and necessary determination at step one as a comparison between the monetized costs of regulation and *monetized* HAP-specific benefits. Rather, the proposed and final rules repeatedly state that the ''primary'' inquiry in the determination should be a comparison of costs and HAP benefits, but did not explain why only *monetized* HAP benefits should be given primacy. See, *e.g.,* 85 FR 31286, 31288, 31303 (May 22, 2020). Given the EPA's recognition of the broad grant of discretion inherent in the phrase ''appropriate and necessary,'' see 81 FR 24430–31 (April 25, 2016), its acknowledgement of Congress' ''particularized focus on reducing HAP emissions and addressing public health and environmental risks from those emissions'' in CAA section 112, see 85 FR 31299 (May 22, 2020), and its knowledge and recognition that the monetized value of one of its points of comparison represented but a small subset of the advantages of regulation, see 85 FR 31302 (May 22, 2020), we now believe it was inappropriate to adopt a framework that first and foremost compared monetized value to monetized value alone. Nothing in the CAA or the Supreme Court's decision in *Michigan* v. *EPA* required the EPA's decision in 2020 to hinge its framework on monetized HAP benefits.

The EPA's consideration of the non-monetized benefits of MATS in 2020 (*i.e.,* the various endpoints discussed in section III.A, including virtually all of the HAP benefits associated with this final action) occurred only at step two, where the EPA considered whether the unquantified benefits, if monetized, were ''likely to overcome the imbalance between the monetized HAP benefits and compliance costs in the record.'' See 85 FR 31296 (May 22, 2020). This approach undervalues the vast array of adverse health and environmental impacts associated with HAP emissions from coal- and oil-fired EGUs that have been enumerated by the EPA [52] and the social value (benefit) of avoiding those impacts through regulation by considering them at a second-step of the framework and summarily dismissing such impacts and benefits as unlikely to overcome costs without sufficient analysis. Indeed, while the 2020 Final Action claimed that unquantified HAP benefits associated with regulating EGUs were significant, as discussed further below, it disregarded certain health and welfare risks associated with HAP emissions and gave incomplete consideration to others.

Further, the three-step framework gave no consideration to the important statutory objective of protecting the most at-risk subpopulations. As noted above, throughout CAA section 112, Congress placed special emphasis on regulating HAP from sources to levels that would be protective of those individuals most exposed to HAP emissions and most sensitive to those exposures as discussed in section II.B.2 above. The rigid and narrow approach to making the appropriate and necessary determination in the 2020 Final Action is at odds with the text and purpose of CAA section 112, and is certainly not required under the express terms of CAA section 112 or CAA section 112(n)(1)(A).

We note as well that the three-step framework employed by the 2020 Final Action is not a formal BCA conforming to recognized principles (see, *e.g.,* OMB Circular A–4,[53] EPA Guidelines for Preparing Economic Analyses [54]). BCA is a specific tool developed by economists to assess total society-wide benefits and costs, to determine the economic efficiency of a given action. Instead of conforming to this comprehensive approach, the first step—and, as applied in the 2020 Final Action, the most important step—of the three-step framework focused primarily

[52] See, *e.g.,* 65 FR 79829–30 (December 20, 2000); 76 FR 24983–85, 24993–97, 24999–25001, 25003–14, 25015–19 (May 3, 2011).

[53] U.S. OMB. 2003. *Circular A–4 Guidance to Federal Agencies on Preparation of Regulatory Analysis.* Available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf,* accessed September 2, 2022.

[54] U.S. EPA. 2014. *Guidelines for Preparing Economic Analyses.* EPA–240–R–10–001. National Center for Environmental Economics, Office of Policy. Washington, DC. December. Available at *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses,* accessed July 23, 2021.

on comparing the rule's total costs to a very small subset of HAP benefits that could be monetized. The EPA largely dismissed and at most gave only secondary weight to the vast majority of the benefits of regulating HAP emissions from stationary sources that cannot currently be quantified, and completely ignored the non-HAP monetized benefits directly attributable to the MATS rule which was contrary to both economic principles for cost-benefit analysis and the Supreme Court's direction to consider ''all the relevant factors'' in making the appropriate and necessary finding. *Michigan* v. *EPA,* 576 U.S. at 752.

Commenters on the 2019 Proposal (84 FR 2670 (February 7, 2019)) objected strenuously to the EPA's revised framework for making the appropriate and necessary determination, arguing that the 2019 Proposal's interpretation ''fails to meaningfully address factors that are 'centrally relevant' to the inquiry of whether it is appropriate and necessary to regulate HAP from EGUs,'' and that the EPA's new interpretation must fall because the EPA failed to provide a reasoned explanation for its change in policy, as required by *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29 (1983), and *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). See 85 FR 31294 (May 22, 2020). Among the factors that commenters argued had been inadequately addressed under the new framework were the ''hazards to public health reasonably anticipated to occur'' that had not been monetized; the non-monetizable benefits of HAP regulation such as the latency, persistence in the environment, and toxicity of HAP as recognized by Congress; the distributional impacts on particular communities and individuals most impacted by HAP emitted from power plants; and preservation of tribal social practices. In responses to these comments, the EPA claimed that it was not ''disregarding'' or ''dismissing'' the concerns raised by the commenters, but rather simply weighing them differently, and explained that the Administration's changed priorities provided the ''reasoned basis'' for its changed interpretation. See 85 FR 31296–97 (May 22, 2020).

Agencies do have broad discretion to re-evaluate policies and change their ''view of what is in the public interest,'' *State Farm,* 463 U.S. at 57, but such re-evaluations must still adhere to principles of reasoned decision-making. The 2020 Final Action did not aver that the statute prohibited the EPA from considering the factors commenters identified in making its appropriate and necessary determination, *e.g.,* non-monetized benefits. Instead, the EPA stated that it was permitted to pick its decisional framework and admitted that its decisional framework might undervalue certain factors. For example, with respect to commenters' concerns that the revised appropriate and necessary framework did not adequately account for adverse impacts on tribal culture or undue concentration of public health risks on certain population subgroups or individuals, the EPA stated: ''In a cost-benefit comparison, the overall amount of the benefits stays the same no matter what the distribution of those benefits is.'' 85 FR 31297 (May 22, 2020). There, the EPA found it ''reasonable to conclude that those factors to which the EPA previously gave significant weight–including qualitative benefits, and distributional concerns and impacts on minorities–will not be given the same weight in a comparison of benefits and costs for this action under CAA section 112(n)(1)(A).'' The decisional framework in the 2020 Final Action, however, did not give ''less weight'' to these factors—it effectively gave them none. In both the selection and application of its framework, the EPA in the 2020 Final Action effectively ignored these factors altogether, and we do not agree that the inability to monetize a factor should render it unimportant. *Cf. Am. Trucking Ass'ns, Inc.* v. *EPA,* 175 F.3d 1027, 1052–53 (D.C. Cir. 1999), reversed in part on other grounds in *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (holding that the EPA was not permitted to ignore information ''because the . . . benefits are difficult, if not impossible, to quantify reliably and because there is 'no convincing basis for concluding that any such effects . . . would be significant' ''); *Pub. Citizen* v. *Fed. Motor Carrier Safety Admin.,* 374 F.3d 1209, 1219 (D.C. Cir. 2004) (''The mere fact that the magnitude of . . . effects is *uncertain* is no justification for *disregarding* the effect entirely.'') (emphasis in original). The mere mention and summary dismissal of factors does not constitute meaningful consideration of those factors.

In the 2020 Final Action, like the 2016 Supplemental Finding before it, the EPA maintained that there is more than one permissible way to interpret the EPA's obligation to consider cost in the appropriate and necessary determination. Given the EPA's knowledge of the significant risks and often irreversible impacts of HAP exposure on vulnerable populations like developing fetuses, the disproportionate impact of EGU HAP emissions on communities who subsist on freshwater fish due to cultural practices and/or economic necessity, and the record of data demonstrating risks to public health amassed over decades, and, perhaps more importantly, the overwhelming quantity of advantages to regulation that could not be monetized, we do not think that selecting a framework that compared first and foremost monetized HAP benefits alone with costs was appropriate. And even if the framework ultimately addressed the statutorily relevant factors because at the second step the EPA ''acknowledged'' these benefits and claimed they were ''relevant,'' we think that the application of that second step fell short, and that the framework we propose in this document is a more appropriate framework for making the determination of appropriateness.

The secondary consideration of non-monetized HAP benefits in the three-step framework only considered HAP-related impacts of regulation insofar as the EPA speculated about what the monetized value of those benefits might be. See 85 FR 31296 (May 22, 2020) (asserting that monetized value of avoiding morbidity effects such as neurobehavioral impacts is ''small'' compared to monetized value associated with avoided deaths). The EPA did not, at this second step, grapple with the existing risk analyses, including those stemming from the statutorily mandated studies in CAA section 112(n)(1). Those analyses demonstrated substantial public health and environmental hazards, even if the hazards were not translated into monetized benefits. *See White Stallion,* 748 F.3d at 1245. While the EPA alluded to some of these risks, the EPA in 2020 ignored important health and welfare hazards documented in the record. For example, endpoints such as delayed infant brain development, increased potential for acute and chronic lung and kidney disorders, as well as adverse effects on wildlife and essential ecosystem services were not acknowledged in the 2020 second step determination. And even for those risks it did consider, that consideration was incomplete. For example, the 2020 Final Action concluded that any benefits accruing to a reduction in premature mortality as a result of reduced HAP emissions was unlikely to be significant. As discussed in section III.A.3 above, and in more detail in the 2021 Risk TSD, recent analyses performed by the EPA conclude that the benefit of avoiding such effects for a single endpoint (avoided MI deaths for the general U.S.

population from mercury exposure through fish consumption) could be as high as $720 million per year.

The EPA also did not explain why other attributes of risk—such as impacts on vulnerable populations, which the EPA is considering in this rulemaking as discussed in section III.A, and the reality that HAP emissions from EGUs are not distributed equally across the population but disproportionately impacts some individuals and communities far more than others—were unimportant, stating only that the selected framework did not accommodate consideration of those factors. The EPA did not acknowledge in any way the importance the statute places on these effects, which is discussed in section II.B.2 above.

As noted, the EPA did not point to anything in the CAA as supporting the use of its three-step framework. This is in stark contrast to the 2016 Supplemental Finding rulemaking, in which the EPA examined CAA section 112(n)(1)(A) and the other section 112(n)(1) provisions, and the rest of CAA section 112 generally, and D.C. Circuit case law on CAA cost considerations to inform the EPA's interpretation of CAA section 112(n)(1)(A). See 80 FR 75030 (December 1, 2015); 2015 Legal Memorandum. In the 2020 Final Action, the EPA merely asserted that a comparison of benefits to costs is ''a traditional and commonplace way to assess costs'' and claimed that the Supreme Court's holding in *Entergy Corp.* v. *Riverkeeper,* 556 U.S. 208 (2009) supported the EPA's 2020 position that, absent an unambiguous prohibition to use a BCA, an agency may generally rely on a BCA as a reasonable way to consider cost. See 85 FR 31293 (May 22, 2020). The 2020 Final Action also pointed out ''many references comparing'' costs and benefits from the *Michigan* decision, including: ''EPA refused to consider whether the costs of its decision outweighed the benefits'' (576 U.S. at 743); ''[o]ne would not say that it is rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits'' (*Id.* at 752); and ''[n]o regulation is 'appropriate' if it does more harm than good'' (*Id.*).

But while we agree that a comparison of benefits to costs is a traditional way to assess costs, the 2020 framework was not a BCA as understood in the economics literature and in OMB and EPA guidance. There is no economic theory or guidance of which we are aware that endorses the approach to comparing certain benefits to costs presented in the 2020 Final Action, in which the first—and, as applied, most important—step entails comparing total costs with a small subset of total benefits. See section III.E for further discussion. Moreover, general support for weighing costs and benefits does not justify placing undue weight on monetized HAP benefits, with secondary consideration for all other benefits for which monetary values cannot be calculated. As noted in Justice Breyer's concurrence in *Entergy Corp.,* the EPA has the ability ''to describe environmental benefits in non-monetized terms and to evaluate both costs and benefits in accordance with its expert judgment and scientific knowledge,'' and to engage in this balancing outside of ''futile attempts at comprehensive monetization.'' 556 U.S. at 235 (Breyer, J., concurring). Benefits—the advantages of regulation—can encompass outcomes that are not or cannot be expressed in terms of dollars and cents, just as the Court found that '' 'cost' includes more than the expense of complying with regulations; any disadvantage could be termed a cost.'' *Michigan,* 576 U.S. at 752. And the Court faulted the EPA's interpretation for ''preclud[ing] the Agency from considering *any* type of cost—including, for instance, harms that regulation might do to human health or the environment. . . . No regulation is 'appropriate' if it does significantly more harm than good.'' *Id.* The constricted view of benefits that the EPA adopted in 2020 was ill-suited to the statutory inquiry as interpreted in *Michigan.*

The primary basis in the 2020 action upon which the EPA relied to find that the 2016 preferred approach was flawed was that the preferred approach failed to ''satisf[y] the Agency's obligation under CAA section 112(n)(1)(A) as interpreted by the Supreme Court in *Michigan.*'' See 84 FR 2674 (February 7, 2019). The 2019 Proposal claimed that the chief flaw of the preferred approach was the EPA's failure to ''meaningfully consider cost within the context of a regulation's benefits,'' asserting that the *Michigan* Court contemplated that a proper consideration of cost would be relative to benefits. See 84 FR 2675 (February 7, 2019). But that is not an accurate characterization of the 2016 preferred approach, wherein the EPA weighed the existing record from 2012 demonstrating that HAP emissions from EGUs pose a number of identified hazards to both public health and the environment remaining after imposition of the ARP and other CAA requirements against the cost of MATS. See 81 FR 24420 (April 25, 2016) (''After evaluating cost reasonableness using several different metrics, the Administrator has, in accordance with her statutory duty under CAA section 112(n)(1)(A), weighed cost against the previously identified advantages of regulating HAP emissions from EGUs—including the agency's prior conclusions about the significant hazards to public health and the environment associated with such emissions and the volume of HAP that would be reduced by regulation of EGUs under CAA section 112.''). The 2020 Final Action further stated that the preferred approach was an ''unreasonable'' interpretation of CAA section 112(n)(1)(A) and impermissibly de-emphasized the importance of the cost consideration in the appropriate and necessary determination. See 85 FR 31292 (May 22, 2020). Instead, it is the 2020 Final Action—a decisional framework which rests primarily upon a comparison of the costs of a regulation and the small subset of HAP benefits which could be monetized—that does not ''meaningfully consider[s] cost within the context of a regulation's benefits,'' 85 FR 31294, because such a narrow approach relegates as secondary (and in application appeared to ignore altogether) the vast majority of that rule's HAP benefits and other advantages, as discussed above. We therefore revoke the 2020 three-step approach and determination because we do not think it is a suitable way to assess the advantages and disadvantages of regulation under CAA section 112(n)(1)(A) and in applying it, the EPA failed to meaningfully address key facts in the existing record. Even if the EPA's selection of the 2020 framework could be considered a permissible interpretation of the broad ''appropriate and necessary'' determination in CAA section 112(n)(1)(A), we exercise our discretion under the statute and as described in *Michigan,* to approach the determination differently.

D. The Administrator's Preferred Framework and Conclusion

The Administrator is finalizing his preferred, totality-of-the-circumstances approach, exercising his discretion under the statute identified by the Supreme Court, as the best and most reasonable way to ''pay attention to the advantages *and* disadvantages of [our] decision,'' *Michigan,* 576 U.S. at 753, in determining whether it is appropriate to regulate coal- and oil-fired EGUs under section 112 of the CAA. This approach, including which factors we consider and how much weight we give them, is informed by Congress' design of CAA

section 112(n)(1) specifically, and CAA section 112 generally. This approach considers and weighs the benefits of regulation against the disadvantages, without analytically distinguishing between monetizable and non-monetizable benefits or costs.

Specifically, under this approach we first consider and weigh the advantages of reducing HAP emissions from EGUs via regulation under section 112 of the CAA. We focus on the public health advantages of reducing HAP emissions because in CAA section 112(n)(1)(A), Congress specifically directed the EPA to find whether regulation of EGUs under CAA section 112 is appropriate and necessary after considering the results of the ''study of hazards to public health reasonably anticipated to occur as a result of emissions'' by EGUs. We also consider the other studies commissioned by Congress in CAA sections 112(n)(1)(B) and (C) and the types of information the statute directed the EPA to examine under those provisions—the rate and mass of EGU mercury emissions, the health and environmental effects of such emissions, and the threshold level of mercury concentrations in fish tissue which may be consumed (even by sensitive populations) without adverse effects to public health.[55] We place considerable weight on the factors addressed in the studies required in the other provisions of CAA section 112(n)(1) following from the Supreme Court's direction in *Michigan* v. *EPA,* and find it is reasonable to conclude that the information in those studies is important and relevant to a determination of whether HAP emissions from EGUs should be regulated under CAA section 112.[56] In *Michigan,* the Supreme Court stated that ''statutory context reinforces the relevance of costs'' and noted the studies required under CAA sections 112(n)(1)(B) and (C) were a further indication of the relevance of costs in the EPA's determination in the EPA's decision to regulate. 576 U.S. at 753–54. The EPA interprets the Court's emphasis that these studies reinforced the relevance of costs, as evidence that other factors contemplated by these studies should also be considered in the appropriate and necessary determination.

Notably, the studies required by CAA section 112(n)(1) place importance on the same considerations that are expressed in the terms and overall structure of CAA section 112. For example, CAA section 112(n)(1)(A) and section 112(n)(1)(B) make clear that the amount of HAP emissions from EGUs is an important consideration: section 112(n)(1)(A) by requiring the EPA to estimate the risk remaining after imposition of the ARP and other CAA requirements, and section 112(n)(1)(B) by requiring the EPA's study to ''consider the rate and mass of mercury emissions.'' Therefore, we believe it is reasonable to conclude that we should consider and weigh the volume of toxic pollution EGUs contributed to our air, water, and land absent regulation under CAA section 112, in total and relative to other domestic anthropogenic sources, and the potential to reduce that pollution, thus reducing its grave harms. In addition, the clear directive in CAA section 112(n)(1)(C) and elsewhere in section 112 to consider risks to the most exposed and susceptible populations, *e.g.,* the listing and delisting provisions and residual risk review discussed in section II.B.2, supports our decision to place significant weight on reducing the risks of HAP emissions from EGUs to the most sensitive members of the population (*e.g.,* developing fetuses and children), and communities that are reliant on self-caught local fish for their survival (*i.e.,* subsistence fisher populations who are more highly exposed than most due to higher rates of fish consumption). Finally, we also consider the identified risks to the environment posed by mercury and acid-gas HAP, consistent with CAA section 112(n)(1)(B) and the general goal of CAA section 112 to address adverse environmental effects posed by HAP emissions. See CAA section 112(a)(7) (defining ''adverse environmental effect'').

We next examine the costs and disadvantages of regulation. As with the advantages side of the equation, where we consider the consequences of reducing HAP emissions to human health and the environment, we consider the consequences of these expenditures for the electricity generating sector and society as informed by the broad range of factors the EPA is required to consider under the CAA section 112(n)(1)(A) determination. We therefore consider compliance costs comprehensively, placing them in the context of the effect those expenditures have on the economics of power generation more broadly, the reliability of electricity, and the cost of electricity to consumers. These metrics are relevant to our weighing exercise because they give us a more complete picture of the disadvantages to society imposed by this regulation, and because our conclusion might change depending on how this burden affects the ability of the industry to provide reliable, affordable electricity. Consistent with CAA section 112(n)(1)(B), this analysis further considers the costs and availability of technologies to control mercury emissions. This analysis includes a discussion of how the power sector complied with the ARP at a much lower cost than estimated in large part because many EGUs switched to use of low-sulfur coal instead of installing flue gas desulfurization scrubbers. This resulted in far fewer reductions in HAP emissions than would have occurred if more EGUs had installed scrubbers as predicted.

Below, consistent with this framework, we consider and weigh the advantages of regulating against the costs and disadvantages of doing so, giving particular weight to our examination of the public health hazards we reasonably anticipate to occur as a result of HAP emissions from EGUs, and the risks posed by those emissions to exposed and vulnerable populations. We note as well that had we found regulation under CAA section 112 to impose significant barriers to provision of affordable and reliable electricity to the public, this would have weighed heavily in our decision. In this weighing process, the fact that we describe the benefits first does not mean that we are in any way downplaying the costs in our ultimate conclusion. Were we to consider the costs first and the benefits second, our conclusion would not change.

We acknowledge, as we recognized in the 2016 preferred approach, that this approach to making the appropriate and necessary determination is an exercise in judgment, and that ''[r]easonable people, and different decision-makers, can arrive at different conclusions under the same statutory provision,'' (81 FR 24431; April 25, 2016), but this type of weighing of factors and circumstances is an inherent part of regulatory decision-making. As noted in then-Judge Kavanaugh's dissent in *White Stallion,* ''All regulations involve tradeoffs, and . . . Congress has assigned EPA, not the courts, to make many discretionary calls to protect both our country's environment and its productive capacity.'' 748 F.3d at 1266 (noting as well that ''if EPA had decided, in an

[55] CAA section 112(n)(1)(B) also directs the EPA to study available technologies for controlling mercury and the cost of such controls, and we consider those in our assessment of cost.

[56] The statute directed the EPA to complete all three CAA section 112(n)(1) studies within 4 years of the 1990 Amendments, expressing a sense of urgency with regard to HAP emissions from EGUs on par with addressing HAP emissions from other stationary sources. See CAA section 112(e) (establishing schedules for setting standards on listed source categories as expeditiously as practicable, but no later than between 2–10 years).

exercise of its judgment, that it was 'appropriate' to regulate electric utilities under the MACT program because the benefits outweigh the costs, that decision would be reviewed under a deferential arbitrary and capricious standard of review''). Bright-line tests and thresholds are not required under the CAA's instruction to determine whether regulation is ''appropriate and necessary,'' nor have courts interpreted broad provisions similar to CAA section 112(n)(1)(A) in such manner. In *Catawba Cty.* v. *EPA,* the D.C. Circuit held that ''[a]n agency is free to adopt a totality-of-the-circumstances test to implement a statute that confers broad authority, even if that test lacks a definite 'threshold' or 'clear line of demarcation to define an open-ended term.' '' 571 F.3d 20, 37 (D.C. Cir. 2009).

In undertaking this analysis, we are cognizant that, while the EPA has been studying the science underlying this determination for decades, the understanding of risks, health, and environmental impacts associated with toxic air pollution continues to evolve. In this document, we explained the additional information that has become available to the EPA since we performed our national analyses of the burdens associated with mercury pollution and emissions from EGUs for the 2012 rulemaking, and explained why, despite the certainty of the science demonstrating substantial health risks, we are unable at this time to quantify or monetize many of the effects associated with reducing HAP emissions from EGUs.[57] We continue to think it is appropriate to give substantial weight to these public health impacts, even where we lack information to precisely quantify or monetize those impacts. As the D.C. Circuit stated in *Ethyl Corp.* v. *EPA,*

> ''Where a statute is precautionary in nature, the evidence difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge, the regulations designed to protect public health, and the decision that of an expert administrator, we will not demand rigorous step-by-step proof of cause and effect. . . . [I]n such cases, the Administrator may assess risks. . . . The Administrator may apply his expertise to draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as 'fact,' and the like.''

541 F.2d 1, 28 (D.C. Cir. 1976). *See also Lead Industries Ass'n* v. *EPA,* 647 F.2d 1130, 1155 (D.C. Cir. 1980) (''[R]equiring EPA to wait until it can conclusively demonstrate that a particular effect is adverse to health before it acts is inconsistent with both the [Clean Air] Act's precautionary and preventive orientation and the nature of the Administrator's statutory responsibilities.'').

The EPA is not alone in needing to make difficult judgments about whether a regulation that has a substantial economic impact is ''worth it,'' in the face of uncertainty such as when the advantages of the regulation are hard to quantify in monetary terms. The Transportation Security Administration (TSA), when determining whether to require Advanced Imaging Technology at certain domestic airports, faced assertions that the high cost of widespread deployment of this type of screening was ''not worth the cost.'' TSA acknowledged that it did not ''provide monetized benefits'' or ''degree of benefits'' to justify the use of the screening but noted that the agency ''uses a risk-based approach . . . in order to try to minimize risk to commercial air travel.'' See 81 FR 11364, 11394 (March 3, 2016). The agency pointed out that it could not consider ''only the most easily quantifiable impacts of a terrorist attack, such as the direct cost of an airplane crashing,'' but rather that it had an obligation to ''pursue the most effective security measures reasonably available so that the vulnerability of commercial air travel to terrorist attacks is reduced,'' noting that some commenters were failing to consider the more difficult to quantify aspects of the benefits of avoiding terrorist attacks, such as ''substantial indirect effects and social costs (such as fear) that are harder to measure but which must also be considered by TSA when deciding whether an investment in security is cost-beneficial.'' *Id.*

In reviewing agency decisions like these, the courts have cautioned against ''substitut[ing] [their] judgment[s] for that of the agenc[ies],'' *State Farm,* 463 U.S. at 43 (1983), and ''[t]his is especially true when the agency is called upon to weigh the costs and benefits of alternative policies,'' *Center for Auto Safety* v. *Peck,* 751 F.2d 1336, 1342 (D.C. Cir. 1985). *See also United Church of Christ* v. *FCC,* 707 F.2d 1413, 1440 (D.C. Cir. 1983) (''[C]ost benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency.''). This applies even where, or perhaps particularly where, costs or benefits can be difficult to quantify. For example, in *Consumer Elecs. Ass'n* v. *FCC,* the D.C. Circuit upheld the Federal Communication Commission's (FCC) mandate to require digital tuners, finding reasonable the Commission's identification of benefits, that is, ''principally speeding the congressionally-mandated conversion to DTV and reclaiming the analog spectrum,'' coupled with the FCC's ''adequate[ ] estimate[of] the long-range costs of the digital tuner mandate within a range sufficient for the task at hand . . . and [its finding of] the estimated costs to consumers to be 'within an acceptable range.' '' 347 F.3d 291, 303–04 (D.C. Cir. 2003) (''We will not here second-guess the Commission's weighing of costs and benefits.'').

Similarly, the Food and Drug Administration, in weighing the costs and benefits of deeming electronic cigarettes to be ''tobacco products,'' described the benefits qualitatively, '' 'potentially coming from' . . . premarket review [*i.e.,* the statutory consequence of deeming], which will result in fewer harmful or additive products from reaching the market than would be the case in the absence of the rule; youth access restrictions and prohibitions on free samples, which can be expected to constrain youth access to tobacco products and curb rising uptake; health warning statements, which will help consumers understand and appreciate the risks of using tobacco products; prohibitions against false or misleading claims and unsubstantiated modified risk claims; and other changes [such as monitoring and ingredient listings].'' *Nicopure Labs, LLC* v. *FDA,* 266 F. Supp. 3d 360, 403–404 (D.D.C. 2017), *aff'd,* 944 F.3d 267 (D.C. Cir. 2019). Plaintiffs challenging the rule claimed that because the FDA had not quantified the benefits of the rule, it ''cannot realistically determine that a rule's benefits justify its costs,'' because ''it does not have . . . a general grasp of the rule's benefits.'' *Id.* at 406. The court disagreed, finding the agency's statement of benefits to have ''provided substantial detail on the benefits of the rule, and the reasons why quantification was not possible'' and in any case agreeing with the agency that there was no obligation to quantify benefits in any particular way. *Id.*

We think the inquiry posed to the EPA by CAA section 112(n)(1)(A) resembles those posed to the agencies in these decisions, in which agencies tasked with protecting and serving the

[57] Unquantified effects include, but are not limited to, additional neurodevelopmental and cardiovascular effects from exposure to methylmercury, degraded ecosystem services resulting from methylmercury, and additional health risks from exposure to non-mercury HAP. Further, these effects can be unequally distributed with more highly-exposed populations (*e.g.,* subsistence fishers) experiencing disproportionally high risks.

public elected to take actions that would impose significant costs in order to achieve important benefits that could not be precisely quantified or were in some cases uncertain—protection from terrorist attacks, speeding the advancement of digital technology, and subjecting a new product to marketing and safety regulation. In those cases, the framework for decision-making was to make a judgment after a weighing of advantages against disadvantages, considering qualitative factors as well as quantified metrics. Here, we employ a similar totality-of-the-circumstances approach to the CAA section 112(n)(1)(A) inquiry as to whether it is appropriate to regulate HAP emissions from EGUs.

1. Consideration of Advantages Under the Administrator's Preferred Approach

Earlier sections of this preamble (sections III.A and III.B) discuss in detail the EPA's evaluation of the public health and environmental advantages of regulating HAP from U.S. EGUs and the reasons it is not possible to quantify or monetize most of those advantages, as well as the EPA's comprehensive assessment of the costs of doing so. We will not in this section repeat every detail and data point, but we incorporate all of that analysis here and highlight only a few of the considerations that weighed heavily in our application of the preferred totality-of-the-circumstances approach.

Under our preferred approach, we first consider the public health advantages to reducing HAP from EGUs, and the other factors Congress identified as focuses for study in CAA section 112(n)(1). As noted, we give particular weight in our determination to the information related to the statutory factors identified for the EPA's consideration by the studies—namely, the hazards to public health reasonably anticipated to occur as a result of EGU HAP emissions (112(n)(1)(A)), the rate and mass of mercury emissions from EGUs (112(n)(1)(B)), the health and environmental effects of such emissions (112(n)(1)(B)), and the levels of mercury exposure below which adverse human health effects are not expected to occur as well as the mercury concentrations in the tissue of fish which may be consumed (including by sensitive populations) without adverse effects to public health (112(n)(1)(C)).

The statutorily mandated studies are the foundation for the EPA's finding that HAP emissions from U.S. EGUs represent a clear hazard to public health and the environment, and as documented in section III.A., the EPA has continued to amass an extensive body of evidence related to the original study topics that only strengthens the conclusions drawn in the earlier studies. As discussed in section III.A, the EPA completed a national-scale risk assessment focused on mercury emissions from U.S. EGUs as part of the 2011 Final Mercury TSD. That assessment specifically examined risk associated with mercury released from U.S. EGUs that deposits to watersheds within the continental U.S., bioaccumulates in fish as methylmercury, and is consumed when fish are eaten by female subsistence fishers of child-bearing age and other freshwater self-caught fish consumers. We focused on the female subsistence fisher subpopulation, which includes females of a child-bearing age who reside with a subsistence fisher, because there is increased risk for *in utero* exposure and adverse outcomes in children born to female subsistence fishers with elevated exposure to methylmercury.[58] Our analysis of the watersheds studied would lead to exposures exceeding the methylmercury RfD for this population, based on *in utero* effects, due in part to the contribution of domestic EGU emissions of mercury. We also found that deposition of mercury emissions from U.S. EGUs alone led to potential exposures that exceed the RfD in up to 10 percent of modeled watersheds.

We have also examined impacts of prenatal methylmercury exposure on unborn children of recreational anglers consuming self-caught fish from inland freshwater lakes, streams, and rivers, and found significant IQ loss in the affected population of children. Our analysis, which we recognized did not cover consumption of recreationally caught seafood from estuaries, coastal waters, and the deep ocean, nevertheless indicated significant health harm from methylmercury exposure. Methylmercury exposure also leads to adverse neurodevelopmental effects such as performance on neurobehavioral tests, particularly on tests of attention, fine motor function, language, and visual spatial ability. See section III.A.2.a in the 2022 Proposal.

The population that has been of greatest concern with respect to methylmercury exposure is women of childbearing age because developing fetuses are especially vulnerable to the effects of methylmercury compared to other life stages. See 85 FR 24995 (May 3, 2011). In the Mercury Study, the EPA estimated that, at the time of the study, 7 percent of women of childbearing age in the continental U.S. (or about 4 million women) were exposed to methylmercury at levels that exceeded the RfD and that about 1 percent of women of childbearing age (or about 580,000 women) had methylmercury exposures three to four times the RfD. See 65 FR 79827 (December 20, 2000). We also performed a new bounding analysis for this action that focuses on the potential for IQ points lost in children exposed *in utero* through maternal fish consumption by the population of general U.S. fish consumers (see section III.A.3.d in the 2022 Proposal).

Another important human health impact documented by the EPA over the last 2 decades includes cardiovascular impacts of exposure to methylmercury—including altered blood-pressure and heart-rate variability in children as a result of fetal exposure and higher risk of acute MI, coronary heart disease, and cardiovascular heart disease in adults, due to dietary exposure. Studies that have become available more recently led the EPA to perform new quantitative screening analyses (as described in section III.A.3 in the 2022 Proposal) to estimate the incidence of MI (heart attack) mortality that may be linked to U.S. EGU mercury emissions (specifically, the counterfactual scenario of EGU emissions in 2016 without MATS). The new analyses performed include an extension of the 2011 watershed-level subsistence fisher methylmercury risk assessment to evaluate the potential for elevated MI-mortality risk among subsistence fishers (see section III.A.3.b in the 2022 Proposal; 2021 Risk TSD) and a separate risk assessment examining elevated MI mortality among all adults that explores potential risks associated with exposure of the general U.S. population to methylmercury from domestic EGUs through commercially-sourced fish consumption (see section III.A.3.c in the 2022 Proposal; 2021 Risk TSD). The updated subsistence fisher analysis estimated that up to 10 percent of modeled watersheds are associated with exposures linked to increased risk of MI mortality, but for some populations such as low-income Black subsistence fishers active in the Southeast, that number is approximately 25 percent of the watersheds modeled. The bounding analysis results estimating MI-mortality attributable to U.S. EGU-sourced mercury for the general U.S. population range from 5 to 91 excess deaths annually. As noted, we give significant weight to these findings

[58] The NAS Study had also highlighted this population as one of particular concern due to the regular and frequent consumption of relatively large quantities of fish. See 65 FR 79830 (December 20, 2000).

and analyses examining public health impacts associated with methylmercury, given the statutory focus in CAA section 112(n)(1)(B) and 112(n)(1)(C) on adverse effects to public health from EGU mercury emissions and the directive to develop an RfD (''threshold level of mercury exposure below which adverse human health effects are not expected to occur''), and in particular one that is designed to assess ''mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations).'' See CAA section 112(n)(1)(C).

Because of CAA section 112(n)(1)(A)'s broader focus on hazards to public health from all HAP, not just mercury, we also give considerable weight to health effects associated with non-mercury HAP exposure (*e.g.,* arsenic, HF, HCl, selenium, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium; see section III.A.2.b in the 2022 Proposal for further detail), including chronic health disorders such as irritation of the lung, skin, and mucus membranes; decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; damage to the kidneys; and alimentary effects such as nausea and vomiting). The 2011 Non-Hg HAP Assessment, performed as part of the EPA's 2012 reaffirmation of the appropriate and necessary determination, expanded on the original CAA section 112(n)(1)(A) Utility Study by examining further public health hazards reasonably anticipated to occur from EGU HAP emissions after imposition of other CAA requirements. This study included a refined chronic inhalation risk assessment that was designed to assess how many coal- and oil-fired EGUs had cancer and non-cancer risks associated with them, and indicated that absent regulation, a number of EGUs posed cancer risks to exposed populations (see section III.A.2.b in the 2022 Proposal).

As discussed in section II.B, the statutory design of CAA section 112 quickly secured dramatic reductions in the volume of HAP emissions from stationary sources. CAA section 112(n)(1)(B) also directs the EPA to study, in the context of the Mercury Study, the ''rate and mass'' of mercury emissions. We therefore think it is reasonable to consider, in assessing the advantages to regulating HAP emissions from EGUs, the volume of emissions from that sector prior to regulation—as an absolute number and relative to other sources—and the expected volume of emissions with CAA section 112(d) standards in place. Prior to the EPA's promulgation of MATS in 2012, the EPA estimated that in 2016, without MATS, coal-fired U.S. EGUs above 25 MW would emit 29 tons of mercury per year. While these mercury emissions from U.S. EGUs represented a decrease from 1990 and 2005 levels (46 tons and 53 tons, respectively), they still represented nearly half of all domestic anthropogenic mercury emissions in 2011 (29 out of 64 tons total). Considered on a proportional basis, the relative contribution of U.S. EGUs to all domestic anthropogenic mercury emissions was also stark. The EGU sector emitted more than six times as much mercury as any other sector (the next highest being 4.6 tons). See Table 3 at 76 FR 25002 (May 3, 2011). Prior to MATS, U.S. EGUs were estimated to emit the majority of HCl and HF nationally and were the predominant source of emissions nationally for many metal HAP as well, including antimony, arsenic, chromium, cobalt, and selenium. *Id.* at 25005–06.

In 2012, the EPA projected that MATS would result in an 88 percent reduction in HCl emissions, a 75 percent reduction in mercury emissions, and a 19 percent reduction in PM emissions (a surrogate for non-mercury metal HAP) [59] from coal-fired units greater than 25 MW in 2015 alone. See 77 FR 9424 (February 16, 2012). In fact, actual emission reductions since MATS implementation have been even more substantial. In 2017, by which point all sources were required to have complied with MATS, the EPA estimated that acid gas HAP emissions from EGUs had been reduced by 96 percent, mercury emissions had been reduced by 86 percent, and non-mercury metal HAP emissions had been reduced by 81 percent compared to 2010 levels. See 84 FR 2689 (February 7, 2019). Retaining the substantial reductions in the volume of toxic pollution entering our air, water, and land, from this large fleet of domestic sources reduces the substantial risk associated with this pollution faced by exposed populations.

Since the EPA first estimated the costs and benefits of MATS in 2011, EGU HAP emissions have decreased significantly due to several factors, including the installation of more affordable and more effective HAP emission controls installed to comply with the EPA's standards and changes in market conditions. All of these factors (control cost and effectiveness, fuel switching) are included in the EPA's sector-wide costs assessment discussed in section III.B. At bottom, and as often happens with environmental standards, the sector achieved the standard and reduced HAP emissions at lower cost than the EPA had projected. In the original 2011 RIA, the EPA estimated monetized benefits using well-established and scientifically supported methods that prevailed when the rule was promulgated. Were the EPA to re-estimate these benefits today, using methods consistent with the current state of the science and accounting for updated emissions changes that reflect both MATS implementation decisions and the effects of market forces, our best professional judgment is that the total monetized benefits would still substantially exceed the costs after an *ex-post* consideration.

Even though reducing HAP from EGUs would benefit everyone in the U.S. by reducing risk and hazards associated with toxic air pollution, it is worth noting that the impacts of EGU HAP emissions in the U.S. have not been borne equally nationwide. Certain communities and individuals have historically borne greater risk from exposure to HAP emissions from EGUs prior to MATS, as demonstrated by the EPA's risk analyses. The individuals and communities that have been most impacted have shouldered a disproportionate burden for the energy produced by the power sector, while the energy produced benefits everyone. In other words, these communities are subject to a greater share of the externalities of HAP emissions generated by EGUs producing power for everyone. A clear example of these disproportionately impacted populations are subsistence fishers who experience increased health risks due to U.S. EGU mercury deposition at the watersheds where they are active (2011 Final Mercury TSD). CAA section 112(n)(1)(C) directed the NIEHS to examine risks to public health experienced by sensitive populations as a result of the consumption of mercury concentrations in fish tissue, which we think includes fetuses and communities that are reliant on local fish for their survival, and CAA section 112 more generally is drafted in order to be protective of small cohorts of highly exposed and susceptible populations. As discussed above in section II.B.2, the statutory design and direction repeatedly emphasize that the EPA should regulate with the most exposed and most sensitive members of the population in mind in order to achieve an acceptable level of HAP emissions with an ample margin of safety. We

[59] See the 2012 MATS Final Rule for a discussion of the use of filterable PM as a surrogate for non-mercury metal HAP (77 FR 9402; February 16, 2012).

therefore give significant weight to the importance of reducing risks to particularly impacted populations, including those who consume large amounts of self-caught fish reflecting cultural practice and/or economic necessity, including tribal populations, specific ethnic communities and low-income populations including Black persons living in the southeastern U.S.

Consistent with CAA section 112(n)(1)(B) and the general goal of CAA section 112 to reduce risks posed by HAP to the environment, we also consider the ecological effects of methylmercury and acid gas HAP (see section III.A.2.c in the 2022 Proposal). Scientific studies have consistently found evidence of adverse impacts of methylmercury on fish-eating birds and mammals, and insect-eating birds. These harmful effects can include slower growth and development, reduced reproduction, and premature mortality. Adverse environmental impacts of emissions of acid gas HAP, in particular HCl, include acidification of terrestrial and aquatic ecosystems. In the EPA's recent ''Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter—Ecological Criteria'' (2020), we concluded that the body of evidence is sufficient to infer a causal relationship between acidifying deposition and adverse changes in freshwater biota like plankton, invertebrates, fish, and other organisms. Adverse effects on those animals can include physiological impairment, loss of species, changes in community composition, and biodiversity. Because EGUs contribute to mercury deposition in the U.S., we conclude that EGUs are contributing to the identified adverse environmental effects, and consider the beneficial impacts of mitigating those effects by regulating EGUs.

2. Consideration of Disadvantages Under the Administrator's Preferred Approach

We turn next in our application of the preferred approach to the consideration of the disadvantages of the MATS regulation, which in this case we measure primarily in terms of the costs of the regulation. As discussed in section III.B, for purposes of this preferred totality-of-the-circumstances approach, we start with the sector-level estimate developed in the 2011 RIA. Given the complex, interconnected nature of the power sector, we think it is appropriate to consider this estimate, which represents the incremental costs to the entire power sector to generate electricity, not just the compliance costs projected to be borne by regulated EGUs. We explain in section III.B that while a precise *ex post* estimate of this sector-level figure is not possible, we update those aspects of the cost estimate where we can credibly do so (see section III.B.2), and our consideration of the cost of regulation therefore takes into account the fact that new analyses performed as part of this action demonstrate that the 2011 RIA cost estimate was likely significantly overestimated. We conclude that regulation is appropriate and necessary under either cost estimate—the original cost estimate in the 2011 RIA or our updated cost estimate that concludes that actual costs were likely significantly lower.

As with the benefits side of the ledger, where we look comprehensively at the effects of reducing the volume of HAP, we also comprehensively assess costs in an attempt to evaluate the economic impacts of the regulation as a whole. We situate the cost of the regulation in the context of the economics of power generation, as we did in 2016, because we think examining the costs of the rule relative to three sector-wide metrics provides a useful way to evaluate the disadvantages of expending these compliance costs to this sector beyond a single monetary value. For each of these metrics, we use our 2011 estimate of annual compliance costs, which, as is discussed in section III.B.2 and the Cost TSD, was likely to have been significantly overestimated by billions of dollars. We first evaluate the 2011 projected annual compliance costs of MATS as a percent of annual power sector sales, also known as a ''sales test.'' A sales test is a frequently used indicator of potential impacts from compliance costs on regulated industries, and the EPA's analysis showed that projected 2015 compliance costs, based on the 2011 estimate, represented between 2.7–3.5 percent of power sector revenues from historical annual retail electricity sales. See section III.B.3; Cost TSD; 80 FR 75033 (December 1, 2015). We also examine the annual capital expenditures that were expected for MATS compliance as compared to the power sector's historical annual capital expenditures. We conclude that projected incremental annual capital expenditures of MATS would be a small percentage of 2011 power sector-level capital expenditures, and well within the range of historical year-to-year variability on industry capital expenditures. *Id.* Finally, we consider the annual operating or production expenses in addition to capital expenditures because we were encouraged by commenters during the 2016 rulemaking to use this broader metric of power industry costs to provide perspective on the cost of MATS relative to total capital and operational expenditures by the industry historically. Consistent with our other findings, we conclude that, even when using the likely overestimated cost of MATS based on the 2011 RIA, the total capital and operational expenditures required by MATS are in the range of about 5 percent of total historical capital and operational expenditures by the power sector during the period of 2000–2011. See section III.B.3 in the 2022 Proposal; Cost TSD; 81 FR 24425 (April 25, 2016). In this action, we re-analyze all of these metrics using updated data to reflect more recent information (as of 2019), and take into consideration the fact that the 2011 RIA cost estimate was likely significantly overestimated. All of this new analysis further supports our findings as to the cost of MATS relative to other power sector economics based on the record available to the EPA at the time we were making the threshold determination (*i.e.,* the 2012 record).

Consistent with the *Michigan* Court's instruction to consider all advantages and disadvantages of regulation, we also assess, as we did in 2016, disadvantages to regulation that would flow to the greater public. Specifically, in weighing the disadvantages in our analysis of whether regulation is ''appropriate,'' we examine whether regulation of EGUs would adversely impact the provision of reliable, affordable electricity, because had regulation been anticipated to have such an effect, it would have weighed heavily on our decision as to whether it was appropriate to require such regulation. The CAA tasks the EPA ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA section 101(b)(1). As noted, we also think examining these potential impacts is consistent with the ''broad and all-encompassing'' nature of the term ''appropriate,'' as characterized by the Supreme Court. *Michigan,* 576 U.S. at 752. We are particularly interested in examining the expected impact of MATS implementation on the retail price of electricity, because in electricity markets, utility expenditures can be fully or partially passed to consumers. It was therefore reasonable to assume that the cost of MATS could result in increased retail electricity prices for consumers, although we emphasize, as we did in 2016, that the electricity price impacts examined under this metric do not reflect *additional* compliance costs

on top of the estimate produced in the 2011 RIA but rather reflect the passing on of a share of those costs to consumers (and ultimately reducing the costs EGU owners would otherwise bear). However, even though the impacts on electricity prices are reflected in the total cost estimate to the sector as a whole, we think, for the reasons stated above, that electricity price impacts are worthy of attention because of the potential effect on the public.

We therefore estimate the percent increase in retail electricity prices projected to result from MATS compared to historical levels of variation in electricity prices. See section III.B.3 in the 2022 Proposal; 80 FR 75035 (December 1, 2015). We estimate that retail electricity prices for 2015 would increase by about 0.3 cents per kilowatt-hour, or 3.1 percent with MATS in place. Between 2000 and 2011, the largest annual year-to-year decrease in retail electricity price was −0.2 cents per kilowatt-hour and the largest year-to-year increase during that period was +0.5 cents per kilowatt-hour. The projected 0.3 cents increase due to MATS was therefore well within normal historical fluctuations. *Id.* As with the other metrics examined, as the increase in retail electricity prices due to MATS was within the normal range of historical variability, a substantially lower estimate for impacts on electricity prices would only further support the EPA's determination. We also note that the year-to-year retail electricity price changes in the new information we examined (*i.e.,* years 2011–2019) were within the same ranges observed during the 2000–2011 period, and that in fact, during that period when MATS was implemented, retail electricity prices have generally decreased (9.3 cents per kilowatt-hour in 2011 to 8.7 cents per kilowatt-hour in 2019). See section III.B.3 in the 2022 Proposal. Consistent with these observed trends in retail electricity prices, as discussed in section III.B.2 and further below, our *ex post* analysis of MATS indicates that the projected compliance costs in the 2011 RIA—and, as a corollary, the projected increases in retail electricity prices—were likely significantly overestimated. Certainly, we have observed nothing in the data that suggests the regulation of HAP from EGUs resulted in increases in retail electricity prices that would warrant substantial concern in our weighing of this factor.

Similar to our reasoning for examining impacts on electricity prices for consumers, in assessing the potential disadvantages to regulation, we elected to also look at whether the power sector would be able to continue to provide reliable electricity after the imposition of MATS. We think this examination naturally fits into our assessment of whether regulation is ''appropriate,'' because had MATS interfered with the provision of reliable electricity to the public, that would be a significant disadvantage to regulation to weigh in our analysis. In examining this factor, we looked at both resource adequacy and reliability—that is, the provision of generating resources to meet projected load and the maintenance of adequate reserve requirements for each region (resource adequacy) and the sector's ability to deliver the resources to the projected electricity loads so that the overall power grid remains stable (reliability). See section III.B.3 in the 2022 Proposal; U.S. EPA 2011, Resource Adequacy and Reliability TSD; 80 FR 75036 (December 1, 2015). Our analysis indicated that the power sector would have adequate and reliable generating capacity, while maintaining reserve margins over a 3-year MATS compliance period. *Id.* We did not in this action update the Resource Adequacy and Reliability Study conducted in 2011, but we note that the EPA, as a primary regulator of EGUs, is keenly aware of adequacy and reliability concerns in the power sector and in particular the relationship of those concerns to environmental regulation. We have seen no evidence in the last decade to suggest that the implementation of MATS caused power sector adequacy and reliability problems, and only a handful of sources obtained administrative orders under the enforcement policy issued with MATS to provide relief to reliability critical units that could not comply with the rule by 2016.

In addition to the cost analyses described above, the EPA revisited its prior records examining the costs of mercury controls consistent with the requirement in CAA section 112(n)(1)(B), the cost of controls for other HAP emissions from EGUs, and the cost of implementing the utility-specific ARP, which Congress wrote into the 1990 CAA Amendments and implementation of which Congress anticipated could result in reductions in HAP emissions. 80 FR 75036–37 (December 1, 2015). The ARP, like MATS, was expected to have a significant financial impact on the power sector, with projections of its cost between $6 billion to $9 billion per year (in 2000 dollars), based on the expectation that many utilities would elect to install scrubbers in order to comply with the ARP. *Id.* at 75037. The actual costs of compliance were much less (up to 70 percent lower than initial estimates), in large part because of the choice by many utilities and power providers to comply with the ARP by switching to low sulfur coal instead of installing scrubbers.[60] This choice also resulted in far fewer reductions in HAP emissions than would have occurred if more EGUs had installed scrubbers.

With respect to the costs of technology for control of mercury and non-mercury HAP, the record evidence shows that in 2012 controls were available and routinely used and that control costs had declined considerably over time. *Id.* at 75037–38. We also note that, as explained at length in section III.B.2 of the 2022 Proposal, the actual compliance costs of MATS, with respect to capital and operating expenditures associated with installing and operating controls, were likely billions of dollars lower than what we projected at the time of the rule. In addition, the newer information examined as part of this action demonstrates that actual control costs were much lower than we projected, which weighs further in favor of a conclusion that it is appropriate to impose those costs in order to garner the advantages of regulation.

3. Conclusions Regarding the Comparison of Advantages and Disadvantages Under the Administrator's Preferred Approach

Our review of the record and application of the preferred totality-of-the-circumstances approach has demonstrated that we have, over the last 2 decades, amassed a voluminous and scientifically rigorous body of evidence documenting the significant hazards to public health associated with HAP emissions from EGUs, particularly to certain vulnerable populations that bear greater risk from these emissions than the general public. We have looked at the volume of emissions coming from these sources and what the impact of regulation would be on that volume. We examined the cost of regulation to industry (even using an estimate of cost that we know to be higher than what was expended), and the potential adverse impacts that could be felt by the public via increased electricity prices and access to reliable electricity. And, consistent with the statute, we have also considered adverse impacts of EGU pollution on the environment as well as availability of controls and the costs of those controls.

[60] U.S. EPA Clean Air Markets Div., 2011, *National Acid Precipitation Assessment Program Report to Congress 2011: An Integrated Assessment,* National Science and Technology Council, Washington, DC.

Even based solely on the record available to us at the time we issued the regulation and made the threshold determination in 2012, we find that the benefits of regulation are manifold to the population at large, and they address serious risks to vulnerable populations that remained after the implementation of the ARP and other controls imposed upon the power sector that were required under the CAA. We have placed considerable weight on these benefits, given the statutory directive to do so in CAA section 112(n)(1)(A) and Congress' clear purpose in amending CAA section 112 in 1990. In contrast, the costs, while large in absolute terms, were shown in our analyses to be within the range of other expenditures and commensurate with revenues generated by the sector, and our analysis demonstrated that these expenditures would not—and did not—have any significant impacts on electricity prices or reliability. After considering and weighing all of these facts and circumstances, in an exercise of his discretion under the Act, the Administrator concludes that the substantial benefits of reducing HAP from EGUs, which accrue in particular to the most vulnerable members of society, are worth the costs. Consequently, we find after weighing the totality of the circumstances, that regulation of HAP from EGUs is appropriate after considering cost.

The newer information examined as part of this action regarding both benefits and costs provides additional support for these conclusions. The robust and long-standing scientific foundation regarding the adverse health and environmental risks from mercury and other HAP is fundamentally unchanged since the comprehensive studies that Congress mandated in the CAA were completed decades ago. But in this action, we completed screening level risk assessments, informed by newer meta-analyses of the dose-response relationship between methylmercury and cardiovascular disease, which indicate that a segment of the U.S. population was at increased risk of prematurely dying by heart attack due to methylmercury exposure with ~90 (possibly more) being attributable to mercury emissions from EGUs.[61] Further, analyses show that some populations (*e.g.,* low-income Blacks in the Southeast and certain tribal communities engaging in subsistence fishing activity) likely bear a disproportionately higher risk from EGU HAP emissions than the general populace.

The new cost information analyzed by the EPA, discussed in section III.B, indicates that the cost projection used in the 2016 Supplemental Finding (*i.e.,* the 2011 RIA cost estimate) likely significantly overestimated the actual costs of compliance of MATS. Specifically, the EGU sector installed far fewer controls to comply with the HAP emissions standards than projected; certain modeling assumptions, if updated with newer information, would have resulted in a lower cost estimate; unexpected advancements in technology occurred; and the country experienced a dramatic increase in the availability of comparatively inexpensive natural gas. All of these factors likely resulted in a lower actual cost of compliance than the EPA's projected estimates in 2011. We therefore find that when we consider information available to the EPA after implementation of the rule, our conclusion that it was appropriate to regulate this sector for HAP is further strengthened. The annual compliance costs projected in the 2011 RIA were likely overestimated by an amount in the billions of dollars.

We note as well that in comments on the 2022 Proposal and during prior rulemaking processes related to the appropriate and necessary determination, stakeholders suggested that undermining the threshold finding in order to pave the way to rescinding MATS would have grave economic and health consequences. Utilities reported that they rely upon the mandated status of MATS in order to recoup expenditures already made to comply with the rule before Public Utility Commission proceedings.[62] States asserted that they rely upon the Federal protections achieved by the rule in state implementation planning and other regulatory efforts.[63] We note this point also implies that the expenditures on MATS compliance reduce costs associated with meeting other regulatory requirements so, broadly speaking, the net cost impacts of MATS are reduced in locations where MATS emissions reductions contribute to meeting air quality goals that are not sector-specific, such as the National Ambient Air Quality Standards (NAAQS). And other industries, such as pollution control companies, have made business decisions based on the existence of MATS.[64] We think these reliance interests, nearly all of which are aligned, also weigh in favor of retaining the affirmative appropriate and necessary determination.

Finally, while we focus on the benefits from reducing HAP, we note that the *Michigan* court directed that ''any disadvantage could be termed a cost.'' *Michigan,* at 752. The corollary is that any advantage could be termed a benefit. And so, while it is not necessary to our conclusion that regulation is appropriate—a conclusion that would be the same even without any additional benefits—we also consider, under our totality-of-the-circumstances approach, whether there are additional advantages or disadvantages to the specific controls imposed under MATS. Specifically, we note that because the controls required to reduce HAP from U.S. EGUs resulted in substantial reductions in co-emitted pollutants, including direct $PM_{2.5}$ as well as SO_2 and NO_X, which are both precursors to ozone and fine particle formation, the Administrator's conclusion is further supported by the ramifications of the regulatory requirements in MATS for these pollutants. We find that the benefits associated with such reductions are appropriate to consider within the totality-of-the-circumstances approach we apply to making the CAA section 112(n)(1)(A) determination. Therefore, while we conclude that the HAP-reduction benefits associated with regulating HAP alone outweigh the costs without consideration of non-HAP-reduction benefits, we also find that, to the extent we consider benefits attributable to reductions in co-emitted pollutants as a concomitant advantage,

[61] This estimate of premature mortality is for the EGU sector after imposition of the ARP and other CAA requirements, but before MATS implementation.

[62] See, *e.g.,* Comment Letter from Edison Electric Institute, Docket ID Item No. EPA–HQ–OAR–2018–0794–2267; Comment Letter from Edison Electric Institute, National Rural Electric Cooperative Association (NRECA), American Public Power Association, The Clean Energy Group, Class of '85 Regulatory Response Group, Large Public Power Council, Global Energy Institute, International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, and the Laborers' International Union of North America, Docket ID Item No. EPA–HQ–OAR–2018–0794–0577.

[63] See, *e.g.,* Comment Letter from Attorneys General of Massachusetts, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia, the Maryland Department of the Environment, the City Solicitor of Baltimore, the Corporation Counsels of Chicago and New York City, the County Attorney of the County of Erie, NY, and the County Counsel for the County of Santa Clara, CA, Docket ID Item No. EPA–HQ–OAR–2018–0794–1175.

[64] See, *e.g.,* Comment Letter from ADA Carbon Solutions, LLC, Docket ID Item No. EPA–HQ–OAR–2018–0794–0794; Comment Letter from Advanced Emissions Solutions, Inc., Docket ID Item No. EPA–HQ–OAR–2018–0794–1181; Comment Letter from Exelon Corporation, Docket ID Item No. EPA–HQ–OAR–2018–0794–1158.

these benefits provide even more support for our conclusion that regulation is appropriate under a totality-of-the-circumstances approach. Specifically, we note that reductions in co-emissions of direct $PM_{2.5}$, SO_2, and NO_X will have substantial health benefits in the form of decreased risk of premature mortality among adults, and reduced incidence of lung cancer, new onset asthma, exacerbated asthma, and other respiratory and cardiovascular diseases. In the 2011 RIA, the EPA estimated the number and value of avoided $PM_{2.5}$-related impacts, including 4,200 to 11,000 premature deaths, 4,700 nonfatal heart attacks, 2,600 hospitalizations for respiratory and cardiovascular diseases, 540,000 lost work days, and 3.2 million days when adults restrict normal activities because of respiratory symptoms exacerbated by $PM_{2.5}$. We also estimated substantial additional health improvements for children from reductions in upper and lower respiratory illnesses, acute bronchitis, and asthma attacks. In addition, we estimated the benefit of reductions in CO_2 emissions under MATS. Although the EPA only partially monetized the benefits associated with these reductions in multiple co-emitted pollutants in the 2011 RIA, the EPA estimated that—due in particular to the strong causal relationship between $PM_{2.5}$ and premature mortality—these reductions could result in as much as $90 billion (in 2016 dollars) in additional public health benefits annually. Therefore, if these non-HAP benefits are considered in the totality-of-the-circumstances approach, we take note of the fact that regulating EGUs for HAP emissions results in substantial other health and environmental benefits by virtue of also reducing non-HAP emissions from EGUs.

Having weighed all of the advantages and disadvantages of EGU HAP regulation, the Administrator concludes, under the preferred totality-of-the-circumstances approach, that regulation is ''appropriate'' whether examining the 2012 record or the updated record and whether considering the benefits conferred by reducing EGU HAP alone or considering the additional benefits to reducing other pollutants from EGUs.

E. The Administrator's Benefit-Cost Analysis Approach and Conclusion

In addition to the preferred approach, we separately put forward an alternative approach in the 2022 Proposal, as we did in 2016, to support a determination that it is appropriate and necessary to regulate HAP from EGUs through the application of a formal BCA. The formal BCA we conducted for purposes of meeting Executive Order 12866, using established BCA practices, also demonstrates that the benefits estimated for MATS far exceed the estimated costs as reported in the 2011 RIA.[65] As explained further below, the EPA used the 2011 RIA as the basis for its formal BCA because it provides the most empirically tractable *ex ante* analysis of potential impacts of the MATS regulation.[66] In its net benefits projection, the 2011 RIA monetized only one benefit from regulating HAP emissions from EGUs because the EPA did not and does not have the information necessary to monetize the many other benefits associated with reducing HAP emissions from EGUs. However, the 2011 RIA properly accounted for all benefits by discussing qualitatively those that could not be quantified and/or monetized. While some of the impacts on particularly impacted populations—such as the children of recreational anglers experiencing IQ loss—were reflected in the net benefits calculation, that accounting does not really grapple with the equity-related question of whether a subset of people should continue to bear disproportionate health risks in order for others to avoid the increased cost of controlling HAP from EGUs. We continue to prefer a totality-of-the-circumstances approach to making the determination under CAA section 112(n)(1)(A), but we think that if a formal BCA is to be used, it should, consistent with economic theory and principles, account for all costs and all benefits.

BCA has been part of executive branch rulemaking for decades. Over the last 50 years, Presidents have issued Executive orders directing agencies to conduct these analyses as part of the rulemaking development process. Executive Order 12866, currently in effect, requires a quantification of benefits and costs to the extent feasible for any regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way certain facets of society. Executive Order 12866, at section 3(f)(1).

The EPA performed a formal BCA to comport with Executive Order 12866 as part of the 2012 MATS rulemaking process (referred to herein as the 2011 RIA). In the 2016 Supplemental Finding, the EPA relied on the BCA it had performed for Executive Order 12866 purposes as an alternative basis upon which to make the appropriate and necessary determination. That BCA, which reflected in its net benefits calculation only certain categories of benefits that could be confidently monetized, estimated that the final MATS would yield annual *net* monetized benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and $33 billion to $81 billion using a 7-percent discount rate. See 80 FR 75040 (December 1, 2015). These estimates included the portion of the HAP benefits described in section III.A that could be monetized at the time, along with additional health benefits associated with the controls necessary to control the HAP emissions from U.S. EGUs. Specifically, as noted, the net benefits estimates included only one of the many HAP benefits associated with reduction of HAP. Nonetheless, the monetized benefits of MATS outweighed the $9.6 billion in estimated annual monetized costs by between 3-to-1 and 9-to-1 depending on the benefit estimate and discount rate used. The implementation of control technologies to reduce HAP emissions from EGU sources also led to reductions in emissions of SO_2, direct $PM_{2.5}$, as well as other precursors to $PM_{2.5}$ and ozone. In the 2011 RIA, the EPA did not quantify the benefits associated with ozone reductions resulting from the emissions controls under MATS, but we did include estimates of the projected benefits associated with reductions in $PM_{2.5}$. These benefits were quite substantial and had a large economic

[65] As explained above, see footnote 30, we use the term ''formal benefit-cost analysis'' to refer to an economic analysis that attempts to the extent practicable to quantify all significant consequences of an action in monetary terms in order to determine whether an action increases economic efficiency. When there are technical limitations that prevent certain benefits or costs that may be of significant magnitude from being quantified or monetized, then information is provided describing those potentially important non-monetized benefits or costs. This usage is consistent with the definition of a benefit-cost analysis used in the economics literature and the EPA's Guidelines for Preparing Economic Analyses. Note that regulatory impact analyses more broadly can give appropriate attention to both unquantified and distributional effects, as OMB's Circular A–4 recommends.

[66] The 2011 RIA reports the best forecast of the benefits, costs and impacts available to the EPA when MATS was promulgated. Furthermore, while the EPA concludes that the monetized costs in the 2011 RIA were likely significantly overestimated, as described in the proposal, the EPA could not estimate *ex post* costs using a technical approach that would be commensurable to the approach taken for the 2011 formal BCA cost projections, in part due to the complex and interconnected nature of the power sector. Therefore, we cannot directly adjust the cost estimate reported in the 2011 formal BCA for this likely overestimate. However, a suite of quantitative and qualitative evaluations indicating that the projected costs in the 2011 RIA were almost certainly significantly overestimated, as well as the potential scope of additional reduced risks such as premature deaths from heart attacks associated with domestic EGU mercury emissions, directionally supports the net benefits calculation reported in the 2011 RIA.

value. We also included in our monetized benefits estimates the effects from the reduction in CO_2 emissions projected to result from the rule.

BCAs are a useful tool to ''estimate the *total* costs and benefits to society of an activity or program,'' and ''can be thought of as an accounting framework of the overall social welfare of a program.'' EPA Guidelines for Preparing Economic Analyses, Appendix A, A–6 (emphasis in original). In a BCA, ''[t]he favorable effects of a regulation are the benefits, and the foregone opportunities or losses in utility are the costs. Subtracting the total costs from the total monetized benefits provides an estimate of the regulation's net benefits to society.'' *Id.* Importantly, however, ''[t]he key to performing BCA lies in the ability to measure both benefits and costs in monetary terms so that they are comparable.'' *Id.;* see also OMB Circular A–4 (''A distinctive feature of BCA is that both benefits and costs are expressed as monetary units, which allows you to evaluate different regulatory options with a variety of attributes using a common measure.'').[67]

In the 2020 Final Action, the EPA rescinded the 2016 alternative approach on the basis that it was ''fundamentally flawed'' because it applied ''a formal cost-benefit analysis'' to the CAA section 112(n)(1)(A) determination. 85 FR 31299 (May 22, 2020). The EPA's objection at the time to the use of ''a formal cost-benefit analysis'' in the context of this determination was that doing so ''implied that an equal weight was given to the non-HAP co-benefit emission reductions and the HAP-specific benefits of the regulation.'' See 85 FR 31299 (May 22, 2020). The EPA concluded that it was not appropriate to use a formal BCA in this situation because ''to give equal weight to the monetized $PM_{2.5}$ co-benefits would permit those benefits to become the driver of the regulatory determination, which the EPA believes would not be appropriate.'' *Id.* The EPA reiterated in the 2020 Final Action that ''HAP benefits, as compared to costs, must be the primary question in making the 'appropriate and necessary' determination'' and ''the massive disparity between co-benefits and HAP benefits on this record would mean that that alternative approach clearly elevated co-benefits beyond their permissible role.'' *Id.* at 31303. ''To be valid, the EPA's analytical approach to [CAA section 112(n)(1)(A)] must recognize Congress' particular concern about risks associated with HAP and the benefits that would accrue from reducing those risks.'' *Id.* at 31301.

We agree that the analytical framework for the appropriate and necessary determination should first and foremost be one that is focused on ''Congress' particular concern about risks associated with HAP and the benefits that would accrue from reducing those risks.'' *Id.* It is for this reason, as discussed in section III.C of this preamble, that we revoke the analytical framework advanced for the appropriate and necessary determination by the 2020 Final Action, as being insufficiently attentive to the public health advantages of regulation. It is also why we prefer a totality-of-the-circumstances test that allows us to weigh primarily the benefits of reductions in HAP among the many advantages of regulation. If it were unreasonable to consider beneficial impacts of emissions reductions beyond the directly regulated pollutants, then it would also be unreasonable to consider any costs other than those borne by the regulated entities. The EPA notes that it similarly accounts for positive and negative consequences such as changes in pollution emissions or concentrations in BCAs when they occur, which is consistent with economic best practices as well as executive guidance on regulatory review, and longstanding EPA practice. See, *e.g.,* 81 FR 24439–40 (April 25, 2016). If the decisional framework is going to be one that considers advantages to regulation primarily in terms of potential monetized outcomes (see 85 FR 31296–97; May 22, 2020), a formal BCA that estimates net outcomes (*i.e.,* by comparing total losses and gains) and conforms to established economic best practices and accounts for the effects of the rule that can be analyzed should be used.[68]

Consistent with scientific principles underlying BCA, both OMB Circular A–4 and the EPA's Guidelines for Preparing Economic Analyses direct the EPA to include all benefits and costs in a BCA. Per Circular A–4, OMB instructs: ''Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.'' Circular A–4 at 26. Similarly, the Guidelines state, ''An economic analysis of regulatory or policy options should present all identifiable costs and benefits that are incremental to the regulation or policy under consideration. These should include directly intended effects and associated costs, as well as ancillary (or co-) benefits and costs.'' Guidelines at 11–2. As discussed in prior MATS rulemakings (see, *e.g.,* 80 FR 75041; December 1, 2015), installing control technologies and implementing the compliance strategies necessary to reduce the HAP emissions directly regulated by the MATS rule also results in reductions in the emissions of other pollutants such as directly emitted $PM_{2.5}$ and SO_2 (a $PM_{2.5}$ precursor). A particularly cost-effective control of emissions of particulate-bound mercury and non-mercury metal HAP is through the use of PM control devices that indiscriminately collect PM along with the metal HAP, which are predominately present as particles. Similarly, emissions of the acid gas HAP are reduced by acid gas controls that are also effective at reducing emissions of SO_2 (also an acid gas, but not a HAP). *Id.* While these $PM_{2.5}$ and SO_2 emission reductions are not the objective of the MATS rule, the reductions are, in fact, a direct consequence of regulating the HAP emissions from EGUs. Specifically, controls on direct $PM_{2.5}$ emissions are required to reduce non-mercury metal HAP, while SO_2 emissions reductions

[67] Circular A–4 also encourages a thorough presentation of benefits and costs that are difficult to quantify. See *id.* at 27 (''If you are not able to quantify the effects, you should present any relevant quantitative information along with a description of the unquantified effects. . .. [P]lease include a summary table that lists all the unquantified benefits and costs, and use your professional judgment to highlight (*e.g.,* with categories or rank ordering) those that you believe are most important (*e.g.,* by considering factors such as the degree of certainty, expected magnitude, and reversibility of effects)'').

[68] In addition, CAA section 112(n)(1)(A) directs the EPA to evaluate the hazards to public health from EGU HAP emissions that are reasonably anticipated ''after imposition of the other requirements of the [CAA].'' The direction to consider the impacts of non-CAA section 112 requirements on HAP emissions from EGUs demonstrates that Congress understood that criteria pollutant controls would achieve HAP reductions. Given this understanding, it is reasonable for the EPA to consider the consequent criteria pollutant reductions attributable to CAA section 112 standards if a BCA is used to evaluate cost in the context of the appropriate finding. Furthermore, CAA section 112 legislative history not specifically directed at EGUs also supports the consideration of criteria pollutant benefits attributable to the regulation of HAP emissions. Specifically, the Senate report for the 1990 CAA amendments states: ''When establishing technology-based [MACT] standards under this subsection, the Administrator may consider the benefits which result from control of air pollutants that are not listed but the emissions of which are, nevertheless, reduced by control technologies or practices necessary to meet the prescribed limitation.'' A Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History), Vol. 5, pp. 8512 (CAA Amendments of 1989; p. 172; Report of the Committee on Environment and Public Works S. 1630).

come from controls needed to reduce acid gas emissions from power plants.

We recognize that there are numerous possible approaches to interpret the EPA's mandate in CAA section 112(n)(1)(A). We have consistently taken the position that a formal BCA is not required under CAA section 112(n)(1)(A). See 80 FR 75039 (December 1, 2015). As set forth above, in *Michigan,* the Supreme Court declined to hold that CAA section 112(n)(1)(A) required such an assessment, stating, ''We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value.'' *Michigan,* 576 U.S. at 759. Nonetheless, the EPA finds that a formal BCA provides a useful alternative approach to its preferred totality-of-the-circumstances analysis, to ''pay[ ] attention to the advantages and disadvantages'' of EGU HAP regulation, *id.* at 2707, in a rigorous and scientifically grounded way.

In the 2015 Proposal, we identified several reasons why a formal BCA was not the EPA's preferred decisional framework under CAA section 112(n)(1)(A). See 80 FR 75025 (December 1, 2015). We recognized that benefits like those associated with reduction of HAP can be difficult to monetize, and this incomplete quantitative characterization of the positive consequences can underestimate the monetary value of net benefits. See 80 FR 75039 (December 1, 2015). This is well-established in the economic literature. As noted in OMB Circular A–4, ''[w]here all benefits and costs can be expressed as monetary units, BCA provides decision makers with a clear indication of the most efficient alternative.'' Circular A–4 at 2. However, ''[w]hen important benefits and costs cannot be expressed in monetary units, BCA is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.'' Circular A–4 at 10. The EPA's Guidelines for Preparing Economic Analyses also recognizes the limitations of BCA, noting that ''[m]ost important, [BCA] requires assigning monetized values to non-market benefits and costs. In practice it can be very difficult or even impossible to quantify gains and losses in monetary terms (*e.g.,* the loss of a species, intangible effects).'' Guidelines, Appendix A at A–7.

We also pointed out in the 2015 Proposal that national level BCAs may not account for important distributional effects, such as impacts to the most exposed and most sensitive individuals in a population. See 80 FR 75040 (December 1, 2015). These distributional effects and equity considerations are often considered outside of (or supplementary to) analyses like BCAs that evaluate whether actions improve economic efficiency (*i.e.,* increase net benefits). For example, children near a facility emitting substantial amounts of lead are at significantly greater risk of neurocognitive effects (including lost IQ points) and other adverse health effects. One perspective on the costs and benefits of controlling lead pollution would be to aggregate those costs and benefits across society, as in a BCA net benefits calculation. However, neither costs nor benefits are spread uniformly across society and failing to take account of that can overlook significant health risks for sensitive subpopulations, such as children. Similarly, in the context of this determination, where we have found disproportionate risk for certain highly exposed or sensitive populations, such considerations are also particularly relevant. We note too that OMB Circular A–4 highlights the special challenges associated with the valuation of health outcomes for children and infants, because it is ''rarely feasible to measure a child's willingness to pay for health improvement'' and market valuations such as increased ''wage premiums demanded by workers to accept hazardous jobs are not readily transferred to rules that accomplish health gains for children.'' Circular A–4 at 31.

With those caveats, in this final action we consider the use of a BCA approach, based on the 2011 RIA performed as part of the original MATS rulemaking, as another way to make the CAA section 112(n)(1)(A) determination of whether it is appropriate to regulate HAP emissions from EGUs. Applying the alternative approach, based on the 2011 RIA, we find that it is appropriate to regulate EGUs for HAP under CAA section 112(n)(1)(A). In the 2011 RIA, the total benefits of MATS were estimated to vastly exceed the total costs of the regulation. As we found when applying the 2016 alternative approach, the formal BCA that the EPA performed for the 2012 MATS Final Rule estimated that the final MATS rule would yield annual monetized total benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and between $33 billion to $81 billion using a 7-percent discount rate; this compares to projected annual compliance costs of $9.6 billion. This estimate of benefits was limited to those outcomes the EPA was able to monetize. Despite the fact that these estimates captured only a portion of the benefits of the rule, excluding many important HAP and criteria pollutant-related endpoints which the EPA was unable to monetize (see section III.A.3) and instead discussed qualitatively in the 2011 RIA, it was clear that MATS was projected to generate overwhelmingly net positive effects on society. We continue to think that the formal BCA approach independently supports the conclusion that regulation of HAP emissions from EGUs is appropriate.[69]

Although it is not possible for the EPA to update the entire comprehensive cost estimate found in the 2011 RIA, we think the information presented in sections III.A and III.B further demonstrates that the net benefits of the MATS rule are overwhelmingly positive. That is, we have attempted to quantify additional risks from EGU HAP exposures, including risks of premature death from heart attacks that result from methylmercury associated with domestic EGU emissions, and we believe the 2011 RIA's projected cost was likely significantly overestimated. Therefore, we find that if BCA is a reasonable tool to use in the context of the EPA's determination under CAA section 112(n)(1)(A), newer data collected since 2011 overwhelmingly support an affirmative determination. Further, that both analytical approaches to addressing the inquiry posed by *Michigan* lead to the same result reinforces the reasonableness of the EPA's ultimate decision that it is appropriate and necessary to regulate HAP emissions from EGUs.

F. The Administrator's Final Determination

In this action, the EPA has re-examined the extensive record, amassed over more than 2 decades, consistently identifying the advantages of regulating HAP from EGUs and evaluating the costs of doing so. We have, for purposes of this action, also updated information on both benefits and costs. Of note, we find that new scientific literature indicates that methylmercury exposure from EGUs, absent regulation, poses cardiovascular and neurodevelopmental risks, particularly to those most exposed to this pollution. With respect to costs, we explain the combination of factors that occurred since the promulgation of MATS that leads us to believe that the

[69] Under this alternative approach, the EPA does not give additional weight to sensitive populations or the most exposed individuals.

projected, sector-level $9.6 billion estimate of the cost of compliance of the rule in 2015 was likely significantly overestimated. We have used two different approaches to considering all of this information, applying first our preferred totality-of-the-circumstances methodology weighing of benefits and costs and focusing particularly on those factors that we were instructed by the statute to study under CAA section 112(n)(1), and next using a formal benefit-cost approach consistent with established guidance and economic principles. Under either approach, whether looking at only the information available at the time of our initial decision to regulate or at all currently available information, we conclude that it remains appropriate and necessary to regulate EGUs for HAP. Substantial emission reductions have occurred after implementation of MATS and these emission limits provide the only Federal guarantee of emission reductions from EGUs, which, absent regulation, were the largest domestic anthropogenic source of a number of HAP. Finalizing this affirmative threshold determination provides important certainty about the future of MATS for regulated industry, states, other stakeholders, and the public.

IV. Public Comments and Responses

In this final action, the EPA is revoking the previous 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112, and reaffirming that it remains appropriate and necessary to regulate HAP emissions from EGUs while considering costs. In the 2022 Proposal, the EPA described a decisional framework for making the appropriate and necessary determination under CAA section 112(n)(1)(A) and presented detailed information about the advantages and disadvantages of EGU HAP regulation to be weighed within that framework. Additionally, the EPA acknowledged ''the difficulties associated with characterizing risks from HAP emissions'' discussed in section III.A of the 2022 Proposal and solicited public comment on ''the health and environmental hazards of EGU HAP emissions . . . and the appropriate approaches for quantifying such risks, as well as any information about additional risks and hazards not discussed in [the] proposal.'' The EPA also explicitly requested public comment on: (1) the updated data and methods that the EPA used to conclude the projected cost estimates of the 2011 RIA were likely significantly overestimated; (2) whether it is reasonable to consider the advantages associated with non-HAP emission reductions that result from the application of HAP controls as part of our totality-of-the-circumstances approach; and (3) whether the EPA should continue to consider, on an alternative basis, results from a BCA in the appropriate and necessary determination.

The EPA received a number of comment submissions from groups representing states, tribes, industries, environmental organizations, health organizations, community organizations, environmental justice organizations, and others. The EPA has taken all the submitted comments into consideration in preparing this final action. All of the comments have been summarized and the EPA has provided detailed responses to the significant comments either here in this final action or in the 2023 RTC Document which is available in the rulemaking docket. This section presents a summary of the most impactful comments received on the 2022 Proposal and the EPA response to those comments.

A. Comments on the Public Health and Environmental Hazards Associated With Emissions From EGUs

This section of the document addresses comments related to the EPA's characterization of the public health (and other environmental) hazards associated with EGU HAP emissions, including whether the existing analyses are sufficient to determine that EGU HAP regulation is appropriate and necessary in light of costs. This section also addresses comments received regarding the EJ implications of this action.

1. Evaluation of the Public Health and Environmental Advantages of Regulating HAP From U.S. EGUs

Comment: Numerous commenters affirmed the EPA's conclusions about the ample record of evidence indicating the substantial public health burden associated with EGU HAP emissions. These commenters noted that research has shown that toxic pollution emitted by power plants is harmful to respiratory, cardiovascular, nervous, endocrine, and other essential life systems. Many commenters added that children, older adults, pregnant women, and people with asthma, lung diseases, cardiovascular diseases, and diabetics are particularly susceptible to EGU HAP emissions. These commenters highlighted estimates from the Centers for Disease Control and Prevention (CDC) that about 7 percent of child-bearing aged women in the U.S. have a blood mercury level that is unsafe for a developing fetus. According to the commenters, as a result, children can be predisposed to significant health harm due to methylmercury exposure over the course of pregnancy leading to low birth weights, growth restrictions, prematurity, and infant mortality. Additionally, these commenters noted that HAP emissions from power plants are also a component of particulate pollution that can lead to heart attacks and strokes on a wide scale, killing thousands of people each year. These commenters emphasized that people of color, people with low incomes, and people who work or exercise outdoors are especially adversely impacted. Beyond the public health burden, numerous commenters also affirmed the EPA's conclusions about other environmental burdens caused by EGU HAP emissions. These commenters observed that harmful effects of mercury on birds and mammals are especially well-established, pointing to a 2018 review [70] of the literature on mercury toxicity in birds that identified serious physiological effects, such as disrupted blood and organ biochemistry, varying hormone levels, suppression of the immune system, inhibition of growth, as well as behavioral effects and reproductive impacts. These commenters agreed with the EPA that the detrimental effects of methylmercury on wildlife can propagate into impacts on human welfare to the extent they adversely influence economies that depend on robust ecosystems (*e.g.,* fishing, tourism). They noted that tissue concentrations of mercury in several fish species have been found to exceed levels at which significant impacts on reproductive outcomes occur and that some state public health officials continue to issue mercury advisories warning people to limit their intake of fish from many U.S. lakes and rivers. These commenters noted the MATS rule was highly effective in reducing mercury and other HAP emissions from power plants between 2011 and 2017. In sum, this set of commenters supported the EPA's determination in the 2022 Proposal that there are significant impacts on human health and the environment from EGU HAP emissions and that this public health and environmental burden must be highly weighted when assessing the advantages and disadvantages of regulating EGUs under CAA section 112.

[70] Collin A. Eagles-Smith *et al., Modulators of mercury risk to wildlife and humans in the context of rapid global change.* 47 Ambio 170, 177 (2018).

Response: The EPA agrees that scientific evidence shows that exposure to methylmercury through fish consumption is associated with a range of adverse health effects and that certain sensitive populations (*e.g.,* children, infants, women of childbearing age) are especially affected. The EPA placed significant weight on the importance of reducing risks to these particularly impacted populations in the 2022 Proposal when determining that EGU HAP emissions reductions were appropriate and necessary (see 87 FR 7664–7666). The EPA further agrees that there are significant health and environmental burdens associated with other non-mercury EGU HAP emissions, and that these adverse health impacts can manifest themselves in a number of different ways. When viewed in whole, the scientific evidence for significant health and environmental burdens associated with EGU HAP emissions is strong, longstanding, and largely undisputed. As a result, the expected improvements to public health and the environment associated with the regulation of EGU HAP emissions carry significant weight in the EPA's final decision to reaffirm the appropriate and necessary determination.

Comment: Other commenters, however, claimed that the EPA analyses described in the 2022 Proposal demonstrated that the public health hazards from EGU HAP emissions are low and appear to fall within ranges that the EPA has previously concluded were acceptable. These commenters asserted that the risk associated with HAP emissions from coal-fired EGUs is well below the level that justifies regulation under CAA section 112. Citing the EPA's 2011 Non-Hg HAP Assessment,[71] they noted that the highest cancer risk associated with an oil-fired utility in the EPA's analysis was 20-in-1 million (based on nickel emissions) and that the highest risk from any coal-fired facility was only 5-in-1 million (based on chromium VI or nickel emissions). They asserted that these levels of risk are below the levels that the EPA finds acceptable for other industries and said the EPA should explain why additional regulation was needed when the EPA's threshold for an acceptable level of risk with an ample margin of safety for cancer is 100-in-1 million, as established in the 1989 Benzene NESHAP. Commenters further noted that the EPA has sometimes found even higher risks to be acceptable, such as in the RTR for the HAP standards for the Miscellaneous Organic Chemical Manufacturing industry.

Response: When conducting any determination of risk, the EPA considers all of the risk metrics associated with the emissions being investigated, including metrics not raised by these commenters such as distributions of population exposures and incidence. In this determination, the EPA concluded that the risks met the criteria for an appropriate and necessary finding based on all of the available information, especially the noncancer hazards. The EPA acknowledges that a 5- to 20-in-1 million risk for cancer falls within the acceptable range. However, we have not established, under section 112 of the CAA, a numerical range for risk acceptability for noncancer effects as we have with carcinogens, nor have we determined that there is a bright line above which risks are unacceptable. As exposure increases above a reference level, our confidence that the public or susceptible subpopulations will not experience adverse health effects decreases and the likelihood that an effect will occur increases. The principal effects of concern in making the risk determination for MATS were the noncancer effects associated with mercury exposure, for which EGUs were the largest emitter nationally. The potential for members of the public to experience increased incidence of IQ loss and cardiovascular disease, and exceed the RfD for noncancer effects from mercury, reduced our confidence that the public is protected from adverse health effects and diminished our ability to determine that such exposures are acceptable.

Comment: Several commenters asserted that the EPA's justification for regulating EGU HAP is ''highly uncertain'' and highlighted some specific elements of the 2022 Proposal where the EPA acknowledged uncertainty in the analyses. They highlighted four elements of the EPA's evaluation of health burden in the 2022 Proposal to support this assertion. First, while the EPA identified 10 percent of computer-modeled watersheds where deposition of mercury from EGUs could lead to exposures exceeding the RfD for subsistence fishers, commenters noted that the RfD is an estimate ''with uncertainty spanning perhaps an order of magnitude'' and further that the EPA could not determine whether subsistence fishers are actually present in those watersheds (see 2022 Proposal, at 7638–39). Second, these commenters concluded that the EPA claim of a benefit of 511 IQ points across the affected population of 240,000 hypothetical children (see 2022 Proposal, at 7639, and 77 FR 9428) was too small to be measured in any real-world evaluation. Third, they questioned the EPA's post-2016 analyses that indicated the IQ points lost annually due to consumption of U.S. EGU mercury in commercially sourced fish could be as low as 80 IQ points or as high as 12,600 IQ points, given that the EPA itself indicated the analyses are merely ''screening-level assessments'' designed as ''broad-bounding exercises'' that do not provide a ''high-confidence estimate of risk'' (87 FR 7641–7644). Fourth, some commenters questioned the significance of the EPA's screening analyses estimating mortality due to cardiovascular impacts from methylmercury, which indicated excess deaths may range from 5 to 91, given that the EPA admits only a ''limited body of existing literature'' exists on associations between mercury and various cardiovascular outcomes (87 FR 7639). In sum, these commenters conclude that the magnitude and uncertainty of the health and environmental advantages associated with reducing EGU HAP emissions are insufficient to justify regulation of such emissions.

Response: The EPA disagrees that there is insufficient evidence justifying regulation of EGU HAP emissions. The 2022 Proposal described the voluminous and scientifically rigorous body of evidence documenting the significant hazards to public health associated with HAP emissions from EGUs, particularly to certain vulnerable populations that bear greater risk from these emissions than the general public (87 FR 7667).[72] As discussed in section III.A.1 above, the D.C. Circuit found that the EPA's risk finding as to mercury alone established a significant public health concern. *White Stallion Energy Center* v. *EPA,* 748 F.3d 1222, 1245 (D.C. Cir. 2014). After weighing the totality of the circumstances, the EPA concludes that regulation of HAP from EGUs is appropriate while considering cost. Indeed, the 1990 amendments to the CAA and revised structure of CAA section 112 indicate Congress' clear intent to aggressively regulate HAP emissions to protect public health even where fully quantifying benefits of such risks is difficult. This comment

[71] U.S. EPA. 2011. *Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November. EPA–452/R–11–013. Docket ID Item No. EPA–HQ–OAR–2009–0234–19912.

[72] Such evidence is presented in the three studies required under CAA section 112(n)(1) and in subsequent analyses by the EPA and others, such as the 2021 Risk TSD, which are included in the docket for this rulemaking.

identifies specific elements of this ''totality'' and asserts that the uncertainty associated with each of these effects individually, when considered along with the magnitude of any individual effect, is insufficient to justify regulation. The EPA addresses each of the individual elements of the comment in detail below but reiterates that the neurodevelopmental and cardiovascular risks associated with consumption of fish impacted by domestic EGU HAP emissions by subsistence and recreational fishers, and the general population, are well-established despite residual challenges in precisely quantifying the impacts of those risks.

The EPA recognizes that an RfD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. Uncertainty is commonly addressed by default values (*e.g.,* factors of 10 or 3) used in the absence of compound-specific data. Thus, there may be potential for overestimating risk however, there is also a possibility that risks could be underestimated. The methylmercury RfD is based on the dose-response relationship between prenatal exposure to mercury and reduced performance on neurodevelopmental tests in 7-year-old children. Importantly, there was no evidence of a threshold for neurotoxicity within the range of exposures in the principal study used to derive the RfD (USEPA, 2001). A 10-fold factor was applied to account for pharmacokinetic and pharmacodynamic uncertainty. In general, the RfD does not define an exposure level corresponding to zero risk; moreover, the RfD does not represent a bright line at which individuals are at risk of adverse effects. However, the RfD is appropriate for identifying exposure scenarios of potential concern from a public health standpoint.

The at-risk watershed subsistence fisher analysis that the EPA completed for MATS had this type of public health hazard focus. Specifically, we estimated the fraction of watersheds where exposure to methylmercury sourced from U.S. EGUs resulted in exposures above the RfD, thereby suggesting the increased likelihood of adverse health effects (but we did not quantify the specific risk or incidence of specific health effects such as IQ loss). The EPA recognizes that the RfD does not represent a concentration response (C–R) function and therefore cannot be used in estimating the incidence of a particular health effect (*i.e.,* the specific magnitude of risk for a particular health endpoint). While a C–R function is available to measure incidence of IQ loss as a neurodevelopmental effect from exposure to methylmercury, it was not possible to quantify the number of subsistence fishers active at specific waterbodies or within specific regions. The EPA readily acknowledges that this is a limitation that impacts both risk and benefits analyses. A key limitation stemming from this inability to characterize this activity is that it is not possible to include subsistence fishers in quantitative estimates of monetized neurological benefits associated with MATS (which is a significant limitation that likely reduces overall quantified benefits).[73] However, the inability to quantify subsistence fishing activity for specific watersheds does not mean that this activity is absent, as can be seen by the variety of surveys capturing self-caught fish consumption rates for this population suggesting that there are individuals engaging in this activity (see section 1.4.3 of the 2011 Final Mercury TSD—at risk watershed analysis). Nevertheless, the inability to quantify subsistence fisher activity and thereby enumerate this population allowing its inclusion as part of the benefit estimate did result in an underestimate of overall benefits (*i.e.,* rule-related reductions in IQ impacts to the children of subsistence fishers were not enumerated as part of overall benefits).

Regarding the comment related to the modeling of IQ loss for recreational anglers that the average IQ loss per associated child is low, the EPA states that on a population level, this low loss is significant.[74] The EPA also notes that the full impact of IQ loss on the fishing population was likely underestimated, given that sufficient data were not available to quantify impacts on the subsistence fisher population. Furthermore, the EPA notes that the recreational angler analysis focused on estimating total lost IQ points (for purposes of valuation) and did not attempt to estimate the magnitude of differential risk across those recreational anglers (and their exposed children) which would likely result from differences in ingestion rates and the magnitude of EGU-sourced mercury impacts to fish in specific watersheds. It is likely that adverse neurodevelopmental impacts would be unevenly distributed in the recreational angler population, and that some individuals experience more significant impacts than others. Our analysis, which focused on average impacts, therefore may underestimate effects on more severely impacted individuals. Furthermore, the EPA recognized at the time that the benefit analysis, by only focusing on recreational anglers, was limited in not addressing other populations potentially impacted by U.S. EGU-sourced mercury (*e.g.,* commercial fish and subsistence fishers). As part of the current review, the EPA has attempted to remedy some of these limitations through the inclusion of bounding analyses for both IQ loss and MI-related mortality potentially experienced by the general population (see 2021 Risk TSD). In the context of assessing public health hazards associated with U.S. EGU-sourced mercury, the EPA notes that the analysis of at-risk watersheds associated with subsistence fisher exposure to mercury (2011 Final Mercury TSD) and the refinements to that subsistence fisher analysis focusing on increased potential for MI mortality which were completed for the current review (2021 Risk TSD, section c) are particularly relevant since they focus on those populations (subsistence fishers) likely to experience elevated exposure to U.S. EGU-sourced mercury through self-caught fish consumption. In the end, the EPA asserts that it is still important to consider these impacts as one of the many advantages of EGU HAP regulation.

Regarding the commenter's observations about the screening-level nature of the IQ loss estimates generated for the general fish-consuming population and that they are a broad bounding exercise, the EPA does not dispute either of these points. In assessing the potential for public health hazard associated with U.S. EGU-sourced mercury, the EPA recognized the merit of attempting to characterize the magnitude of IQ loss and MI-related

[73] We do note that the bounding analyses focusing on IQ loss and IHD-related mortality for the general population of fish consumers in the U.S. while possibly capturing some fraction of risk impacts to subsistence fishers likely did not fully capture this dimension of MATS-related impacts. This reflects the possibility that the NHANES data which is a key input to these bounding estimates may not fully capture mercury exposure (hair-mercury levels in women) to this more highly exposed and smaller subgroup of self-caught fish consumers (see 2021 Risk TSD for additional detail on the methodology used in generating the bounding estimates).

[74] It is also important to note, that even a small shift in the population mean IQ may be significant from a public health perspective because such a shift could yield a larger proportion of individuals functioning in the low range of the IQ distribution, which is associated with increased risk of educational, vocational, and social failure, as well as reduce the proportion of individuals with high IQ scores (2013 Pb Integrated Science Assessment (ISA), section 1.9.1. U.S. EPA, Integrated Science Assessment for Lead. Washington, DC, EPA/600/R–10/075F).

mortality for the general fish consuming population. Furthermore, in attempting to characterize the magnitude of risk for these two important health endpoints, the EPA concluded that different approaches can be used reflecting different degrees of complexity and sophistication and that these different approaches have tradeoffs. In developing the bounding analyses for these scenarios presented in the 2021 Risk TSD and summarized in the 2022 Proposal, the EPA focused on developing analyses that would provide an order-of magnitude characterization of risk to inform the appropriate and necessary determination. The EPA recognizes that it could have attempted a more complex and sophisticated modeling of point-estimate risk for each scenario (*i.e.,* linking U.S. EGU mercury emissions to dispersion over fisheries to specific species impacts to U.S. population exposure) but we note that this still would have been subject to uncertainty and that, in the EPA's estimation, the bounding analyses generated were sufficient to help inform the public health determination (and that given their bounding nature, they require a lower degree of overall complexity compared with a point-estimate of risk).

Regarding the observation that the estimate of MI mortality reflects on a limited body of existing literature, the EPA acknowledges challenges in developing a C–R function for methylmercury exposure and cardiovascular effects, including those referenced by the EPA in the 2022 Proposal (as cited by the commenter). However, as described in the 2022 Proposal, the EPA finds that the conclusions and recommendations by an expert panel convened in 2010 by the EPA to look at the possibility of deriving a C–R function for cardiovascular effects associated with methylmercury exposure (as reported in Roman *et al.,* 2011), together with studies published since that workshop including, Hu *et al.,* 2021 provide sufficient support for the development of a bounding analysis for the MI mortality endpoint. Specifically, we note that Roman *et al.,* 2011 concluded that ''We found the body of evidence exploring the link between MeHg and acute myocardial infarction (MI) to be sufficiently strong to support its inclusion in future benefits analyses, based both on direct epidemiological evidence of an MeHg–MI link and on the association of MeHg with intermediary impacts that contribute to MI risk. Although additional research in this area would be beneficial to further clarify key characteristics of this relationship and the biological mechanisms that underlie it, we consider the current epidemiological literature sufficiently robust to support the development of a dose—response function.'' Furthermore, the expert panel recommended ''the development of a dose—response function relating MeHg exposures with MIs for use in regulatory benefits analyses of future rules targeting Hg air emissions.'' In addition, the expert panel provided specific technical guidance regarding derivation of a C–R function, including that MI mortality risk only be modeled above methylmercury exposure levels associated with the Kuopio Ischemic Heart Disease Risk Factory Study (KIHD) and European Multicenter Case-Control Study on Antioxidants, Myocardial Infarction, and Cancer of the Breast Study (EURAMIC)-based studies that the panel recommended as the basis for deriving risk models for this endpoint. The EPA has followed this guidance provided by the panel in designing the bounding analysis. The EPA acknowledges that there is a lack of consensus regarding the specification of the C–R function for cardiovascular effects and methylmercury exposure, but notes that a lack of consensus regarding the C–R function is not uncommon in risk assessment. In the case of methylmercury, a critical factor in specifying the C–R function is determining which cardiovascular health endpoints will be covered. However, just because risk assessment teams can develop different C–R functions reflecting different study designs regarding factors such as the health endpoints modeled does not mean that there is insufficient overall confidence to conduct a risk assessment. Rather this implies that different approaches can be taken regarding the tradeoff between the design of the risk assessment (*e.g.,* the range of health endpoints modeled) and overall confidence in the risk estimates generated. For example, other commenters utilized an even broader range of cardiovascular-related endpoints in order to capture a wider range of potential benefits. Conversely, the EPA asserts that there is increased confidence associated with a more focused (MI mortality-based) assessment of risk although we acknowledge that we are likely to underestimate potential benefits by excluding other cardiovascular effects which may be affected by methylmercury.

2. Potential Underestimation of the Health Benefits of U.S. EGU HAP Reductions

Comment: Numerous commenters, while supportive of the proposal to reaffirm the appropriate and necessary determination, stated concern that the scope of the overall RIA quantitative air toxics benefits analysis remains incomplete and conservative, such that commenters claim the EPA did not capture the full benefits of EGU HAP reductions. Specifically, these commenters note that the RIA does not address all mercury health endpoints, other HAP-reduction health benefits, or benefits to wildlife. The commenters asserted that the RIA does not fully reflect the state-of-the science and that it is essential that the EPA expand the scope of benefits addressed and incorporate available scientific information and methods more fully so as to provide an enhanced description of quantitative benefits. The commenters further asserted that ''by underestimating and dismissing mercury[-reduction] benefits, the EPA has provided fodder to those who wish to jettison the regulation and discredit the Agency.'' They said a more accurate and expanded analysis of benefits that reflects the state of the science would help to protect the EPA from repeated attacks on the standards and would also allow the public to understand why it is so important to control mercury and other HAP emissions from one of the highest emitting sectors in the U.S.

Response: The EPA agrees that it is important to consider the full set of health and environmental improvements associated with mercury reductions. The 2022 Proposal highlights the known health risks associated with mercury pollution throughout. Section III.A.2 of the 2022 Proposal provides an extensive overview of the health effects associated with methylmercury, including neurodevelopmental, cardiovascular, and immunotoxic effects; as well as an overview of the ecological effects of methylmercury (87 FR 7637–7641). The EPA confirmed in the 2022 Proposal that mercury is highly toxic, persistent, and bioaccumulates in food chains; and that, when evaluating the totality of the circumstances, it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired power plants. As part of the current review, the EPA also expanded the assessment of risk associated with U.S. EGU-sourced mercury exposure to include quantitative estimates of IQ loss and MI-related mortality in the general population associated with commercial

fish consumption. Acknowledging the uncertainties associated with linking changes in mercury emissions to health effects, these bounding analyses estimates are intended to present order-of-magnitude estimates of potential effects (87 FR 7641–7644).

However, the EPA agrees with the commenters that the BCA in the 2011 RIA for MATS does not quantitatively evaluate all possible HAP-related health and environmental effects, exposure pathways, and affected populations. As a result, the BCA in the 2011 RIA underestimated the total benefits of MATS. The EPA acknowledged this in section III.A.4 of the 2022 Proposal, noting that it is technically challenging to quantitatively estimate the extent to which EGU HAP emissions will result in adverse effects across the U.S. population (87 FR 7664).

The EPA also acknowledges receipt of comments that suggest the quantitative benefits of methylmercury reductions are larger than what the EPA estimated in the original 2011 RIA and that the value of the changes associated with cardiovascular mortality are also larger than what the EPA estimated in the bounding analyses described in the 2021 Risk TSD and section III.A.3 of the 2022 Proposal. That said, the EPA disagrees with the commenters' assertion that additional quantitative analyses of the benefits of EGU HAP are needed to successfully support the MATS appropriate and necessary determination. The EPA recognizes that the available evidence provided by commenters suggests that the result of additional quantitative analyses would yield even higher estimates of the benefits of EGU HAP emissions reductions, which would further support the EPA's determination that regulating EGU HAP emissions is appropriate and necessary under either the EPA's preferred totality-of-the-circumstances or alternative BCA approach. However, while it may be possible to generate updated estimates of risk using more sophisticated modeling approaches, the resulting risk and benefit estimates will be subject to increased uncertainty due to their greater data requirements and the need for subjective judgment in bridging certain analytical modeling steps given existing data gaps. This additional analytical uncertainty and the methodological choices made within any new quantitative analyses would open new dimensions to debate. Still, it is worth noting that the benefits shown in the bounding analyses of both IQ loss and MI mortality in the general population (as completed by the EPA for the 2022 Proposal) are not trivial and could result in substantial benefits ranging up to $50 million and $720 million, respectively (87 FR 7647 and 2021 Risk TSD, sections i and ii).

Regarding potential benefits associated with non-mercury HAP, the EPA recognizes that MATS is likely to produce a range of non-cancer and cancer risk reduction benefits. However, readily available toxicity factors, while allowing the magnitude of public health hazard to be assessed, did not support the modeling of population-level risk with sufficient confidence which is needed to estimate monetized benefits. The EPA acknowledges that this represents a conservative approach to estimating total benefits. Regarding the modeling of cumulative exposure and disproportionate impacts from HAP on low-income, immigrant, Indigenous, and communities of color, the EPA recognizes these scenarios as being important to good risk and benefits analysis in the regulatory context. Consequently, the national-scale watershed-level analysis of subsistence fisher related risk associated with mercury exposure (2011 Final Mercury TSD) included coverage for populations that fall into these EJ-related categories. In summary, the EPA's conclusion is that new analyses, in the context of this specific action to reaffirm the appropriate and necessary determination, would add uncertainty to the quantitative estimate of benefits, further delay finalization of the appropriate and necessary determination, and would not ultimately modify the EPA's existing affirmation that EGU HAP regulation is appropriate and necessary.

Comment: Another set of commenters, who opposed the proposal to reaffirm the appropriate and necessary determination, stated concern that the EPA leans too heavily on the idea that most of the HAP benefits cannot be quantified or monetized. The commenters said the EPA must ''decide . . . within the limits of reasonable interpretation [] how to account for cost.'' (*see Michigan,* 576 U.S. at 759; *see* also, *e.g., Pub. Citizen* v. *Fed. Motor Carrier Safety Admin.,* 374 F.3d 1209, 1219 (D.C. Cir. 2004)). These commenters argued it is critical that the EPA can explain how much the regulation costs and ''understand the benefits from the regulations'' (*White Stallion Energy Ctr.,* 748 F.3d at 1258–59). They further argued that regulatory decisions founded on the possibility of a benefit that cannot be quantified or monetized do not meet Congress' threshold to regulate EGUs under CAA section 112. The commenters quoted from the *Michigan* court case (576 U.S. at 757) that ''[I]f uncertainty about the need for regulation were the only reason to treat power plants differently, Congress would have required the Agency to decide only whether regulation remains 'necessary,' not whether regulation is 'appropriate and necessary.'''

Response: The EPA disagrees with the commenter's assertion that the EPA has not adequately explained the large and significant benefits associated with EGU HAP control, and disagrees with the assertion that the EPA does not meet Congress' threshold to regulate EGUs under CAA section 112 unless benefits are quantified or monetized. In section III.A of the 2022 Proposal, the EPA summarized the long-standing and extensive body of evidence regarding the adverse human health impacts of mercury emissions and introduced two specific mercury-related risk analyses which provided a screening-level assessment of quantified benefits associated with the MATS action. While the EPA has recognized the difficulty in quantifying and monetizing certain benefits of regulating HAP, that does not mean such benefits are simply ''possible'' benefits of regulation. *See e.g., Pub. Citizen* v. *Fed. Motor Carrier Safety Admin.,* 374 F.3d 1209, 1219 (D.C. Cir. 2004) (''The mere fact that the magnitude of . . . effects is *uncertain* is no justification for *disregarding* the effect entirely.'') (emphasis in original). Indeed, in *White Stallion Energy Center* v. *EPA,* the D.C. Circuit unanimously agreed with the EPA that mercury emissions pose a significant threat to public health. 748 F.3d 1222, 1246 (D.C. Cir. 2015). And, the Supreme Court in *Michigan* v. *EPA* did not grapple with the specific type of cost analysis that the EPA should conduct, and did not require the EPA to conduct a formal BCA in making the appropriate and necessary determination. See 576 U.S. at 759. The EPA's preferred totality-of-the-circumstances approach, discussed in detail in section III.D, therefore allows the EPA to give weight to advantages, such as reduced human exposure to HAP emissions that result in detrimental health outcomes, which cannot be quantified or monetized due to uncertainty about the magnitude of the effects, but are nonetheless important benefits of regulating EGU HAP emissions.

Further, in section III.E of the 2022 Proposal, the EPA described an alternative approach for making the appropriate and necessary determination that applied a formal BCA based on the original 2011 RIA. This analysis showed that the total net benefits of MATS were overwhelmingly

larger than the MATS costs, even when the EPA was only able to partially monetize the benefits of regulating HAP emissions from EGUs. The new screening-level information examined by the EPA with respect to updated science and cost information only strengthened this conclusion. This comment introduces a strawman (*i.e.,* possibility of benefits that may or may not occur) that does not reflect the reality of the MATS action where the EPA has both identified quantifiable benefits that are far greater than the costs of the rule and fully described an additional set of unquantifiable benefits that justify the cost of EGU HAP regulation.

In addition, the EPA disagrees with commenters characterization of the *Michigan* decision as establishing or suggesting that regulatory decisions founded on the possibility of a benefit that cannot be quantified or monetized do not meet Congress' threshold to regulate EGUs under CAA section 112. The Court in *Michigan* explained that ''uncertainty about whether regulation of power plants would still be needed after the application of the rest of the Act's requirements,'' 576 U.S. at 757, *e.g.,* the ARP, was ''*one* of the reasons Congress treated power plants differently [under section 112.]'' *Id.* (emphasis in original). However, as commenters noted, the Supreme Court stated that ''if uncertainty about the need for regulation were the *only* reason to treat power plants differently, Congress would have required the Agency to decide only whether regulation remains 'necessary,' not whether regulation is 'appropriate *and* necessary.'" *Id.* (emphasis in original). As such the Court recognized in addition to uncertainty as to the impact of other CAA requirements on EGU HAP emissions, the EPA was tasked with an additional consideration as to whether regulation of EGU HAP was appropriate based on costs and other factors identified in the three studies required under CAA section 112(n)(1). Contrary to the commenter's suggestion, these statements by the Court do not suggest Congress established a threshold to regulate EGUs under CAA section 112, which cannot be overcome without quantified or monetized benefits.

3. Evidence Supporting the EPA's EJ Considerations

Comment: Numerous commenters stated that people who have low incomes or are members of racial or ethnic minorities bear a disproportionate burden of the health effects of air pollution, and these vulnerable people and communities in which they live deserve the protections the CAA requires the EPA to provide. These commenters asserted that the EPA's revocation of the 2016 Supplemental Finding put millions of Americans at risk, especially people of color and low-income populations who are more likely to live closer to EGUs and who likely bore a significant share of the local exposures to EGU HAP before the EPA adopted and implemented MATS. These commenters pointed to a 2022 study [75] that found that neighborhoods in which the Federal Government discouraged investment nearly 100 years ago face higher levels of air pollution today, including nitrogen dioxide and fine PM pollution. Commenters said that power plants contribute to the pollution burdens borne by Black, Indigenous, and other communities of color, which already face disproportionately high levels of air pollution.

Response: The EPA agrees that the adverse effects of EGU HAP emissions are not experienced equally across the population. The 2022 Proposal summarizes a series of screening-level analyses conducted by the EPA that suggest that certain communities of color and low-income populations experience elevated risks from methylmercury relative to the general population (87 FR 7647). The EPA acknowledges receipt of the studies submitted by commenters showing that certain historically disadvantaged populations may live in closer proximity to coal- and oil-fired EGUs, relative to other groups and agrees that evidence in that regard further strengthens the appropriate and necessary determination. We reiterate that section 112 has a particular focus on reducing HAP related risks to the most exposed and most sensitive members of the public.

Comment: Several commenters stated that the EPA must continue to give significant weight to the benefits of regulating EGUs under CAA section 112 specifically for communities of color, Indigenous communities, and low-income communities based on several statutory considerations. In the view of these commenters, Congress expressed a clear intent to reduce the harms that HAP inflict on these often disadvantaged, overburdened communities through regulation under CAA section 112. The commenters cited several CAA provisions to support this assertion: CAA section 112(n)(1)(C) which focuses on mercury impacts on sensitive populations; CAA section 112(f)(2)(A) which requires further regulation where residual risk to the individual most exposed does not fall below a specified threshold after implementation of a standard; and CAA section 112(c)(9)(B)(i) which prohibits deregulating a source category where risk to the individual most exposed does not fall below a specified threshold. These commenters noted that although the latter two provisions are phrased in terms of the risks from the emissions of a single source within the source category, it is impossible to understand the danger posed by a source's HAP emissions without also considering background exposures to toxic pollutants affecting the same health outcomes. These commenters noted that it is well established that communities of color and economically disadvantaged communities frequently are home to the individuals most exposed to toxic emissions from various industrial sources. Given the statutory goal of reducing the risks posed by regulated sources' emissions to these individuals, these commenters concluded that it is especially appropriate to regulate EGUs under CAA section 112 because communities of color and low-income communities have historically comprised a significant share of the population living near EGUs, and of populations otherwise highly exposed to risks from EGUs' emissions of HAP.

Response: The EPA agrees with the commenters that the statutory design and direction of CAA section 112 repeatedly emphasize that EPA actions developed under this provision should be designed with the most exposed and most sensitive members of the population in mind. The EPA also agrees that sensitive populations should be interpreted in a CAA section 112 context to include not just those who are most exposed to EGU HAP, based on proximity, but also those who are most at risk from exposures to EGU HAP. As noted in the 2022 Proposal (87 FR 7638), health evidence suggests that people with impaired nutritional status are especially susceptible to adverse neurodevelopmental effects from methylmercury.[76] Given that these nutritional deficits are often particularly pronounced in vulnerable communities,[77] it further justifies the need for assessing EGU HAP effects through a lens of EJ considerations.

[75] Lane, HM, Morello-Frosch R, Marshall JD, Apte JS (Lane *et al.*) 2022. *Historical Redlining is Associated with Present-Day Air Pollution Disparities in U.S. Cities. Environmental Science & Technology Letters.*

[76] U.S. EPA. 1997. *Mercury Study Report to Congress.* EPA–452/R–97–003 December 1997.

[77] *Id.*

Comment: An additional set of commenters expressed concern for the impact of methylmercury on Indian Tribes. These commenters asserted that tribes bear a greater risk from mercury exposure because many tribes catch fish for their economic livelihoods, sustenance, the exercise and continuation of treaty rights, or the continuation of cultural and religious practices. They noted that American Indians are at high risk of mercury exposure because many consume fish at far higher rates than the general public. The commenters provided evidence that some tribes consume four or five times more fish than other communities. The commenters concluded that because fish consumption is the primary pathway for human exposure to methylmercury, American Indians have suffered disproportionate health, cultural, and economic consequences from mercury emissions from power plants. They pointed to evidence that suggests the blood mercury levels of American Indians are among the highest of any racial or ethnic group in the U.S., which makes American Indians at unusually high risk for neurodevelopmental disorders, poor cardiovascular health, and other adverse effects from methylmercury exposure. They further pointed to research which suggested that some children in Great Lakes tribal populations suffer IQ losses ranging from 6.2 to 7.2 points due to methylmercury exposure. The commenters added that mercury in fish can also disrupt cultural practices and sever tribal members from their responsibilities toward the natural world. The commenters said that many tribes depend on the purity of waters for many of their cultural and religious practices. The commenters noted that tribal members can be faced with the choice of risking their health or abandoning their traditions and subsistence practices. The commenters said that subsistence or other fishing activities are a way for tribal members to ensure the continued existence of cultural practices; longstanding traditions of fishing and fish consumption are central to many tribes' cultural identity and are critical social practices that have been handed down from generation to generation. Methylmercury contamination, they said, threatens traditional Indian ways of life. Finally, these commenters acknowledged the challenges associated with the idea that the most exposed and most sensitive members of a population often represent only a small portion of the total population and that quantification of HAP specific benefits to that small group can be difficult to estimate. To that end, they supported the EPA use of a totality-of-the-circumstances approach to determining if EGU HAP regulation is appropriate and necessary.

Response: The EPA appreciates the tribal perspective raised by the commenters. The EPA is mindful of the Federal Government's trust responsibility to federally recognized tribes, which forms a key element of the Federal/tribal government-to-government relationship and which, among other things, informs how the EPA exercises its discretion in carrying out EPA activities. The EPA has acted consistently with that responsibility in developing this final action. The EPA recognizes the potential for disproportionate impacts to Native American populations from U.S. EGU-sourced methylmercury, including both the health-related impacts as well as cultural impacts referenced by the commenter. The EPA placed significant weight in the 2022 Proposal (87 FR 7666) on the importance of reducing risks to particularly impacted populations, including tribal communities. In the original 2011 Final Mercury TSD, focused on identifying at-risk watersheds associated with subsistence fishing populations, the EPA included a tribal population with substantially elevated subsistence fish consumption rates specifically to provide coverage for this at-risk population. That Native American population was included in the 2021 Risk TSD when the EPA expanded the analysis of risk to subsistence fishers to cover the potential for increased MI-related mortality risk (see Table 3 of the 2021 Risk TSD). Both of these analyses showed Native Americans living in the vicinity of the Great Lakes to be at elevated risk for both neurodevelopmental effects and MI-related mortality (due to U.S. EGU-sourced methylmercury) at the higher consumption rates (*i.e.,* 95th to 99th percentile consumption rates of 213 and 493 g/day self-caught fish consumption, respectively). For that reason, the EPA included high-end self-caught fish consumption rates in its national-scale at-risk watershed analyses focusing on subsistence fishers (see Table 3 of the 2021 Risk TSD). That analysis included 99th percentile fish consumption rates for tribal populations near the Great Lakes.

Comment: Several commenters stated that the EPA should consider new data on high-quantity fish consumers and their socioeconomic attributes and address disproportionate exposures of indigenous people, Pacific Islanders, and others. These commenters noted that data on high-frequency seafood consumers are limited in NHANES to a few hundred individuals per survey cycle and pointed to a newer study that has conducted a nationally representative survey of high-frequency fish consumers.[78] The inclusion criterion for this study was consumption of more than three fish meals per week, which corresponds to the 95th percentile consumer in the NHANES survey. In the view of these commenters, the newer data provide more appropriate seafood consumption rates and suggest that values used in the 2011 RIA underestimate methylmercury exposure and associated health risks, especially for lower income households and those with less than a high school education. Like other commenters above, they noted evidence that disparities in methylmercury exposure exist in the U.S. population. They cited the finding that U.S. individuals who identified their ethnicity as ''other'' (*i.e.,* Asian, Pacific and Caribbean Islander, Native American, Alaska Native, multi-racial and unknown race) consistently have blood mercury levels that are higher than other demographic groups between 2001–2018 based on NHANES/CDC data. These commenters therefore requested that the EPA incorporate updated consumption data to estimate exposures of vulnerable groups more accurately.

Response: The EPA acknowledges the commenters highlighting the additional study on fish consumption rates across populations and the summary of CDC/NHANES blood mercury data by ethnicity and fish consumption rates. The EPA continues to assert that the analyses discussed in the 2022 Proposal (87 FR 7646–7647), while subject to uncertainties related to input choices on fish consumption rates and subsequent potential underestimation, are sufficient to demonstrate evidence of uneven distributions in the impacts of U.S. EGU mercury emissions. The EPA agrees that incorporating updated data would provide a more comprehensive consideration of the EJ implications of this action, but the time it would take to generate those analyses would have further delayed finalizing this action and would not change the EPA's binary decision that U.S. EGU HAP regulation is appropriate and necessary.

[78] K. von Stackelberg, M. Li, E. Sunderland. *Results of a national survey of high-frequency fish consumers in the United States.* Environ. Res., 158 (2017), pp. 126–136. *https://doi.org/10.1016/j.envres.2017.05.042.*

B. Comments on Consideration of Cost of Regulating EGUs for HAP

This section of the document addresses comments related to the EPA's analysis of compliance costs in the 2022 Proposal.

1. EPA Cost Analyses Inappropriately Focus on Whether Costs Are Bearable, Not if They Are Appropriate

Comment: Commenters opposed the proposal's ''affordability'' basis and said that the EPA had inappropriately concluded that MACT standards for EGUs are appropriate and necessary because the power sector and electricity consumers can survive the added burden of MACT regulations. Commenters said that, with the phrase ''appropriate and necessary,'' Congress could not possibly have intended to grant the EPA unbounded authority to regulate, so the affordability test was inconsistent with the EPA's statutory authority. Commenters additionally asserted that the EPA's affordability test was applied too broadly (across the entire power sector) and inappropriately included natural gas-fired facilities that realized competitive advantages under MATS. Commenters said the affordability test had the effect of spreading MATS impacts over more than the burdened portion of the sector and said this approach makes impacts look less significant than if the EPA had compared compliance costs to only the portion of the power sector within source categories affected by MATS. Commenters also said that the EPA's burden estimates ignored clear and direct impacts to other industries that were affected by the rule and said the EPA failed to reasonably analyze disadvantages of its actions as required by the *Michigan* finding. Commenters requested that the EPA reconsider its finding in a way that focuses on impacts at coal- and oil-fired units as well as on impacts at other related industries like coal mining.

Response: The EPA disagrees with commenters that its consideration of costs is confined to whether the power sector can bear the cost of compliance (*i.e.* an ''affordability test''). Rather, in the preferred totality-of-the-circumstances approach, the Administrator considers the disadvantages of regulation against its advantages to determine whether it is appropriate and necessary to regulate EGU HAP emissions under CAA section 112. More discussion on this approach and how the approach is consistent with the Supreme Court's decision in *Michigan* v. *EPA* is presented in section IV.D.2 below.

As explained in section III.B.1 of the 2022 Proposal, the EPA's estimate of the MATS compliance costs reflects the cost to the entire power sector. MATS is an economically consequential rulemaking that was expected to induce changes in both electricity and fuel markets. To focus on the projected impact of MATS on only affected coal- and oil-fired EGUs would produce an incomplete estimate of the entire cost of complying with the rule and, thus, lead to an inappropriate consideration of the costs of the final MATS rule. The costs associated with installation and operation of pollution controls (or coal switching) at some affected EGUs can influence the generation decisions of both EGUs that are regulated by MATS and those that are not regulated by MATS. The electric power system is complex and interconnected, and the generation decisions of a single affected EGU can influence the dispatch of other EGUs, wholesale power prices, and fuel prices. Therefore, for a rule with the scope and projected impacts of MATS, it is reasonable for the EPA to consider the full cost of the rule by capturing costs expended at all electric generators, not just those subject to emissions requirements under MATS.

Furthermore, an evaluation of the costs borne solely by EGUs subject to MATS would need to account for the potential ability of owners of these EGUs to recoup their increased expenditures through higher electricity prices or else an estimate of the costs of MATS borne by the owners of those EGUs (*i.e.,* their economic incidence) would be an overestimate. However, in doing so, the costs borne by the consumers of electricity from these higher prices would be ignored, which the EPA finds inappropriate. Therefore, the EPA determined it was appropriate to account for all the costs that may be expended as a result of the rule that could be reasonably estimated, including changes in fuel expenditures, recognizing that these expenditures would ultimately be borne either by electricity consumers or electricity producers, and not limiting our consideration of costs to just those borne by a subset of producers or consumers. Additionally, drawing on results presented in the 2011 RIA, the EPA examined potential impacts on owners of coal mines and their employees via assessing changes to coal production, prices, and employment that might be attributable to the MATS rule. These analyses projected a 1 percent decrease in coal production, a 3 percent average increase in the minemouth price of coal, a 2 percent average increase in the delivered price of coal, and a loss of about 430 job years as the result of the rule in 2015.[79] [80] We consider these national-level impact projections to be relatively small and, as we have demonstrated that the 2011 RIA likely significantly overestimated the compliance costs of the rule. However, as explained above, the EPA believes it is important in this rulemaking to take a broad view of the potential impacts of MATS and not simply focus on impacts to owners of coal- and oil-fired generation. This approach is consistent with EPA evaluations of other power sector rules.

2. The EPA Cost Analyses Fail To Account for Localized Costs and Disproportionate Effects

Comment: Several commenters asserted that the EPA's cost estimates in the proposed rule do not include costs for units which were forced to make the decision to shut down due to MATS. Commenters argue that MATS caused significant coal-fired EGU retirements and said that the regulation, not low natural gas prices, caused a surge in coal-fired EGU retirements that has disadvantaged the coal mining industry. These commenters said that unit shutdowns cause very significant costs to owners and the community and that shutdown costs can include loss of unrecovered capital, loss of salary and benefits to employees, loss of tax dollars to the locality, cost of replacement generation, as well as other costs. These commenters concluded that the EPA's industry-wide cost accounting methods do not weigh specific localized costs and disadvantages that accompany CAA section 112 requirements. These commenters said that the EPA should not consider shutdowns as no-cost emission reductions and that the EPA's cost estimates should more fully reflect impacts on individual coal plants and communities that are uniquely dependent on those plants.

Response: As explained in more detail below, the EPA did consider employment impacts both in its 2011 RIA and in this action. There is no reliable way, however, of attributing local employment impacts to MATS regulation (any more than other concurrent changes which might have affected local employment levels), and

[79] Note the projected price of coal in the 2011 RIA increased because the rule was expected to shift some coal demand toward more expensive types of coal.

[80] Numbers of job years are not the same as numbers of individual jobs, but represents the amount of work that can be performed by the equivalent of one full-time individual for a year (or FTE).

the commenters do not provide any relevant data or method of analysis for the EPA to consider. According to the employment impacts analysis in the 2011 RIA, the *ex ante* projected impacts of MATS on aggregate employment levels were ambiguous as to whether the net impacts were positive or negative. That said, the EPA did consider such impacts in this final action.

As a general matter, employment impacts of major environmental regulations are likely to be composed of a mix of potential declines and gains across occupations, regions, and industries which are governed by broader labor market conditions. Isolating such impacts is a challenge, as they are difficult to disentangle from employment impacts caused by a wide variety of ongoing, concurrent economic changes. The economics literature illustrates some of the challenges for empirical estimation of facility- or location-specific employment: for example, there is a paucity of publicly available data on plant-level employment, thus most studies must rely on confidential plant-level employment data from the U.S. Census Bureau, typically combined with pollution abatement expenditure data, that are too dated to be reliably informative, or other measures of the stringency of regulation. These challenges are primarily associated with retrospective, or *ex post,* examinations of employment impacts of regulation. The challenges may be more pronounced when projecting impacts on a prospective, or *ex ante,* basis as the analysis would have to anticipate complex interrelated responses of many directly and indirectly affected entities across several industries.

The 2011 RIA provides what the EPA viewed as the most empirically tractable *ex ante* analysis of potential employment impacts of the MATS regulation. This analysis was composed of national-level estimates of employment changes for the regulated sector and pollution control sector, including estimates of employment impacts for the natural gas and coal production sectors from changes in EGU fuel demand. While the EPA projected employment losses due to incremental retirements of coal-fired EGUs and coal production activities, the EPA also projected gains in employment in pollution control-related activities, as well as natural gas production. More detail on these estimates follows.

The 2011 MATS RIA presented the EPA's estimates of employment impacts resulting from projected increase in demand for the design and construction of pollution controls. These results indicated that MATS could support or create roughly 46,000 one-time job-years of direct labor driven by the need to design and build the pollution controls. These labor categories included boilermakers, engineers, and general construction labor. In addition to the employment impacts estimated for the pollution control sector, the 2011 RIA projected changes in labor requirements resulting from the need to operate pollution controls, the increased demand for materials used in pollution control operation, shifts in demand for fuel in response to the rule, changes in employment resulting from additional coal retirements, and changes in other industries due to changes in the price of electricity and natural gas. The 2011 RIA presented an estimated increase of 3,890 job-years needed to supply inputs for pollution control equipment such as lime for FGD, activated carbon for activated carbon injection, trona for DSI, and baghouse material for fabric filters. The 2011 RIA projected decreases of 4,320 job-years due to retirements of existing coal capacity and a decrease of 430 job-years due to changes in coal demand. Lastly, the 2011 RIA projected an increase natural gas labor requirements of 670 job-years.

The 2011 RIA noted that the EPA provided estimates of some but not all potential employment impacts of MATS. The most notable of those that the EPA is unable to estimate are the impacts on employment as a result of the increase in electricity and other energy prices in the economy. The EPA said in the 2011 RIA that, in the case of MATS, labor may be a complement or a substitute to electricity in production, depending on the sector. The 2011 RIA also noted that environmental regulation may increase labor productivity by improving health. The EPA also was not able to quantify all potential employment changes in industries that support and supply the pollution control industry. Because of this inability to estimate all the important employment impacts, the EPA stated it neither summed the impacts that the EPA was able to estimate nor made any inferences of whether there is a net gain or loss of employment in the aggregate.

As noted in the 2022 Proposal, based upon contemporaneous market and technological conditions, the power sector modeling that supported the 2011 RIA anticipated natural gas prices that were approximately 82 percent higher than the level to which they fell in the 2015–2019 period. But, as explained in the Cost TSD of the 2022 Proposal, there are inherent limits to what can be predicted *ex ante.* The cost estimates were made 5 years prior to full compliance with MATS; stakeholders, including a leading power sector trade association, have indicated that our initial cost projection significantly overestimated actual costs expended by industry for compliance with MATS, likely by a figure in the billions of dollars per year. This results in part because of significant changes in the power sector outside of the realm of EPA regulation; there were dramatic shifts in the cost of natural gas and renewables, state policies, and Federal tax incentives which have also further encouraged construction of new renewables. These shifts have led to significantly more retirements of coal capacity and coal-fired generation than projected in the 2011 RIA's baseline. Given these findings, any incremental localized coal production sector and coal-fired EGU sector impacts the EPA could have reasonably anticipated as directly attributable to MATS are likely far fewer than those the commenters claim. No specific examples of localized adverse impacts that are directly attributable to the MATS regulation are provided by the commenters, nor are specific additional data or analytical approaches for the EPA to identify and consider what might be highly localized impacts of the broad types that the commenters describe. While the 2011 RIA-projected gains and losses are small relative to the size of the relevant energy sectors, based upon the conclusion that the 2011 RIA likely significantly overestimated the compliance costs, it is reasonable to conclude that the projected employment impacts, both positive and negative, in the 2011 RIA were also overestimated and likely relatively small.

The 2011 RIA economic analysis also accounted for the ability of displaced workers to obtain new employment which would mitigate employment impacts resulting from MATS. The cost analysis in the 2011 RIA accounts for the expectation that workers must be paid a prevailing wage in order to work because they have other employment opportunities or alternative uses for their time. For example, the EPA's estimated cost of pollution controls is, in part, based on the need to encourage workers to shift their employment to pollution control activities rather than other available options. Similarly, the EPA's estimates of fuel costs account for the wages workers demand for their time to produce those fuels (rather than, say, hold a different job). In the example of reductions in fuel use, such that workers may be displaced, the cost estimate in the 2011 RIA accounts for

the reduced expenditures on fuels because, in part, those workers have other employment options as reflected in the wage they receive. That said, in the case of highly concentrated reductions in the demand for workers in what may be undiversified local or regional economies, workers may not easily find other options at the otherwise prevailing wage (*i.e.,* with many local workers seeking new opportunities at once). However, the EPA's analysis in the 2011 MATS RIA did not project highly localized impacts, and, as noted in the 2022 Proposal, independent peer-reviewed studies confirm that other market circumstances, such as the increase in natural gas supplies, and not MATS or other environmental regulations, were primarily responsible for driving changes in the EGU sector after MATS was promulgated.

Indeed, CAA section 112(n)(1) does not specify how the EPA should consider employment impacts of EGU HAP regulation. The EPA therefore determined to consider employment impacts as part of its broader sector-wide cost inquiry. The EPA notes, however, that beyond the direction from the Supreme Court to reasonably examine the costs of regulation at the EPA's discretion, the studies required under CAA section 112(n)(1) do not require EPA to examine employment impacts, much less highly localized employment impacts, which is in contrast to other specific impacts the EPA is directed to consider under the statutory provision, *e.g.,* considering threshold levels of mercury concentrations in fish tissue consumed by sensitive populations pursuant to CAA section 112(n)(1)(C). Nonetheless, the EPA has taken such impacts into consideration in this final action in determining it is appropriate and necessary to regulate EGU HAP under CAA section 112.

Also, contrary to what is asserted by the commenter, the EPA's analysis does consider the costs of closures, and the costs of any emissions reductions resulting from a projected retirement are appropriately accounted for. The power sector modeling used in the 2011 RIA provides a forecast of least-cost capacity expansion, electricity dispatch, and emission control strategies while meeting electricity demand and various environmental, transmission, dispatch, and reliability constraints. The compliance cost estimate drawn from the 2011 RIA accounts for the cost of replacement generation and capacity when other capacity is withdrawn from service.

Comment: Commenters asserted that the EPA's totality-of-the-circumstances methodology likely understated the impact on utility services for lower-income populations. The commenters noted that MATS compliance costs required their utility to increase retail electricity rates by approximately 10 percent over 20 years. They noted that this is a significant added burden to the 20 percent of the utility's customers that fall below the poverty line. The commenters suggested that similar rate impacts from MATS compliance will likely affect lower income utility customers throughout the country. The commenters concluded that regardless of whether high-level, industry-wide impacts can be considered ''relatively small,'' personal impacts for many lower income utility customers were much greater and were not factored into the EPA's proposed totality-of-the-circumstances methodology.

Response: With respect to retail electricity prices, the EPA reiterates our finding from the 2022 Proposal that changes in inflation-adjusted national average retail electricity prices were within the range of normal year-to-year variability and decreased by nearly 7 percent during the period when MATS was implemented. This finding was made in support of the EPA's comprehensive analysis of costs of regulation, which is informed by the types of information the EPA is required to consider under CAA section 112(n)(1). The EPA further notes that the EPA's analysis of potential retail electricity price impacts was appropriately conducted at a regional level and reflects average price impacts. This analysis did not consider the state and Federal programs that exist for the purpose of reducing retail electricity prices at low-income households (*e.g.,* the Low Income Home Energy Assistance Program). Furthermore, the 10 percent rate increase noted by the commenters is within the range of annual variability in the 2001–2011 period. State-level data from the EIA demonstrates that in the 10 years preceding the implementation of MATS, the change over time in inflation-adjusted state electricity rates ranged from −25.3 percent to 29.7 percent, with an average of 0.8 percent.[81] In the 10 years following MATS promulgation, inflation-adjusted changes over time (and representing all cost drivers, not just MATS) ranged from −20.2 percent to 15.8 percent with an average of −0.3 percent.

[81] U.S. Energy Information Administration *Annual Electric Power Industry Report, Form EIA–861 detailed data files,* October 2022.

3. The EPA Should Strengthen the 2022 Proposal by Updating the 2011 RIA Compliance Cost Estimates

Comment: Commenters supported the EPA's retrospective review of MATS cost data and cited studies finding actual costs of complying with air pollution regulations are often substantially lower than pre-compliance estimates. Commenters said that actual costs of the MATS rule are much lower than originally anticipated and cited the 2011 BCA estimate ($9.6 billion) as compared to several recent studies. Commenters said that compliance costs were likely lower than the EPA projected in 2011 due to market factors like lower natural gas prices and renewable energy costs that drove many retirements (rather than MATS), eliminating compliance costs originally projected for the retired units. Commenters said that these favorable market factors also reduced the costs of replacement generation that was needed due to compliance with the rule.

Several commenters who supported restoration of the Administrator's finding that it is appropriate and necessary to regulate HAP emissions from MATS-affected EGUs said that the EPA should consider strengthening the 2022 Proposal by updating the 2011 RIA using current data on costs (and benefits). These commenters concluded that the 2011 RIA overestimated costs compared to the actual costs incurred during MATS implementation. They asserted that the EPA's failure to update the cost estimates in the record is problematic given the Supreme Court's emphasis on weighing costs in *Michigan* v. *EPA.* In the view of these commenters, the EPA need not necessarily perform a new BCA, but should add information that is in the record. Commenters said that the EPA's proposed totality-of-the-circumstances approach does not provide the best cost estimates implicitly required in *Michigan* v. *EPA.* Additionally, these commenters opposed the EPA's ongoing reliance on the 2011 BCA because the 2011 BCA considered only 2015 costs and stated that the current proposal should consider those 2015 capital costs as sunk costs. They said the relevant costs for this proposal are mostly costs of operating control devices.

Response: The EPA agrees with the commenters that the 2011 RIA likely significantly overestimated the compliance costs of MATS. Section III.B of the 2022 Proposal presented a suite of qualitative and quantitative analysis of the cost assumptions used in the 2011

RIA power sector modeling and the resulting projection. These evaluations indicated that the projected costs in the 2011 RIA were likely significantly overestimated. We found that the 2011 RIA's estimate of the number of installations alone led to an overestimate of about $2.2 to $4.4 billion, and that if recent updates to the cost and performance assumption for pollution controls had been reflected in the 2011 RIA modeling, the projected compliance costs would likely have been even lower. As we note above, even though the projected costs we use in this analysis are likely significantly overestimated, we find that they are still relatively small when placed in the context of the economics of the industry and well within historical variations.

As noted in the proposal, while the EPA considers that the information that was available at the time of MATS promulgation provided a valid analytical basis for the threshold appropriate and necessary determination, because many years have elapsed since then, the EPA believes it is reasonable to examine how the power sector has evolved since MATS was finalized and, with the benefit of hindsight, compare important aspects of the 2011 RIA projections with what actually happened since MATS was promulgated. Despite the commenter's assertion, it is necessary for that examination to include both the capital (sunk or otherwise) as well as operating costs of pollution controls in the EPA's consideration of cost, because that is consistent with the EPA's consideration of compliance costs at the time of promulgation.

As is explained in section III.B of the 2022 Proposal, there are significant technical challenges to producing rigorous retrospective estimates of regulatory costs, particularly for a rule like MATS which regulates hundreds of units within a complex, interdependent, and dynamic economic sector. However, as commenters have noted, the record is clear that the 2011 MATS RIA overestimated costs which further supports the determination that regulation is appropriate and necessary after considering cost.

C. Comments on Revocation of the 2020 Final Action

1. The EPA's Action in 2020 Was a Correct Response to Michigan

Comment: Commenters stated that the 2020 Final Action's finding that it is not ''appropriate and necessary'' to regulate HAP emissions should remain in place because it meaningfully compared the cost of compliance against the benefits of reducing HAP via regulation, consistent with the Supreme Court's decision in *Michigan* v. *EPA.* Commenters said that in *Michigan,* the Court held that the EPA had an obligation to adequately consider costs when making regulatory decisions. According to the commenters, although *Michigan* concluded that agencies have discretion about how to account for costs, that discretionary decision still must give sufficient weight to cost as a centrally relevant factor and must be within the limits of reasonable interpretation. However, commenters claim that in the 2016 Supplemental Finding, the EPA concluded that the rule's costs were reasonable and that there were significant benefits to public health and to the environment, but the EPA did not compare costs to benefits. The commenters said that the EPA's alternative BCA approach relied heavily on co-benefits as opposed to direct benefits and did not meaningfully consider cost. Commenters contend that in the 2020 Final Action, the EPA used a more limited, proper definition of ''benefits'' that did not give significant weight to co-benefits. Commenters stated that the 2020 Final Action relied on a focused examination of the relevant costs compared to the benefits associated with regulating HAP emissions, finding that the benefits were not substantial enough for the regulation to be justified overwhelmingly; and that because monetized costs of regulation exceeded monetized benefits by three orders of magnitude, unquantified HAP benefits did not alter the outcome of that cost-benefit comparison, and practically all the monetized benefits of regulation were derived from non-HAP co-benefits. According to the commenters, the EPA was also right not to disproportionately load the analysis with unquantified and nonmonetized effects felt only by isolated communities or within only narrow pockets of potentially affected persons. The comments stated that by using a more traditional approach to the cost-benefit analysis focusing on the HAP regulated by CAA section 112 in the 2020 Final Action, the EPA was better able to consider the appropriate factors in determining whether it was appropriate and necessary to regulate. The 2020 Final Action finding that it is not ''appropriate and necessary'' to regulate HAP emissions treats power plants differently from other stationary sources the way Congress intended under the CAA, according to the commenters.

Commenters also stated that retaining the 2020 Final Action eliminates risks of regulating pollutants under CAA section 112 of the CAA that are already covered elsewhere in the CAA, and risks of increased power rates with potentially little public health benefit.

Response: As explained further in section III.C above, the EPA found that the framework used to consider cost in the 2020 Final Rule, which centered the EPA's mandated determination under CAA section 112(n)(1)(A) on a comparison of costs solely to those HAP-reduction benefits which could be monetized, was ill-suited to making the appropriate and necessary determination in the context of CAA section 112(n)(1)(A) specifically, and the CAA section 112 program generally. Moreover, neither the statutory text nor legislative history of CAA section 112, nor the *Michigan* decision support a conclusion that the 2020 framework is required under CAA section 112(n)(1)(A), and the EPA has determined to adopt a different, more reasonable approach to considering costs in this context.

The EPA also disagrees with the conclusions presented in the 2020 Final Action as to the 2016 Supplemental Finding's two approaches, and the commenters' related contention that the EPA did not compare costs to benefits in the 2016 Supplemental Finding. As the EPA explained in the 2015 Proposal, and in this rulemaking, the record demonstrates that the EPA thoroughly considered compliance costs, and weighed them with the identified risks posed by HAP emissions from power plants. See section III.C of the 2022 Proposal.

The EPA further disagrees with commenters' characterization of the 2020 Final Action's determination of benefits. As discussed further in section III.C above, the 2020 Final Action failed to consider unquantified benefits of regulating HAP from EGUs sufficiently by relegating such benefits to the second step of the three-step framework employed by the 2020 Final Action, and summarily determining that unquantified benefits, even if monetized, were unlikely to alter the conclusion under the first part of the framework. However, the 2020 Final Action recognized that the monetized value of benefits represented but a small subset of the advantages of regulation. *See* 85 FR 31302 (May 22, 2020); *cf. Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (holding that the EPA was not permitted to ignore information ''because the . . . benefits are difficult, if not impossible, to quantify reliably and because there is 'no convincing basis for concluding that any such effects . . . would be significant' ''); *Pub. Citizen* v. *Fed. Motor Carrier Safety*

Admin., 374 F.3d 1209, 1219 (D.C. Cir. 2004) (''The mere fact that the magnitude of . . . effects is uncertain is no justification for disregarding the effect entirely.'').

In addition, the EPA believes that the 2020 Final Action erred in not giving significant weight to the analysis with unquantified and nonmonetized effects felt only by isolated communities or within only narrow pockets of potentially affected persons. As noted in section II.A above, Congress directed the EPA to establish threshold levels of exposure under which no adverse effect to human health would be expected to occur, even considering exposures of sensitive populations, and throughout CAA section 112, Congress placed special emphasis on regulating HAP from sources to levels that would be protective of those individuals most exposed to HAP emissions and most sensitive to those exposures. Similar to the 2020 Final Action's dismissal of unmonetized benefits, the prior action ignored impacts to sensitive populations.

Moreover, the EPA disagrees with commenters' claim that the 2020 Final Action was better able to consider the appropriate factors in determining whether it was appropriate and necessary to regulate under CAA section 112. While the EPA agrees that a comparison of benefits to costs is a traditional way to assess costs, as explained in section III.C above, the 2020 framework was not a formal BCA, as there is no economic theory or guidance that the EPA is aware of that endorses the analysis used in the 2020 Final Action. Further, the EPA did not point to anything in the CAA to support the three-step framework that was utilized in the 2020 Final Action.

As commenters noted, the EPA's alternative approach, which applied a formal BCA, in the 2016 Supplemental Finding did consider the non-HAP emissions reduction benefits of regulating EGU HAP, which the EPA determined should be included in a formal BCA approach as such practice is required by widely-accepted economic principles, is contained in executive branch guidance, and applying a formal BCA for the appropriate and necessary determination is consistent with long-standing EPA practice, the statute, and legislative history. However, the EPA's preferred approach in the 2016 Supplemental Finding determined it was appropriate and necessary to regulate EGU HAP regardless of the benefits of reducing non-HAP emissions. We reaffirm that determination here.

Comments regarding the risk of regulating pollutants under section 112 of the CAA that are covered elsewhere in the Act are addressed in section 4.1 of the 2023 RTC Document.

2. Regulatory Certainty, Rate Recovery Issues, and Reliance Interests Weigh in Favor of the EPA's Revocation of the 2020 Action

Comment: Commenters from the electric utility industry stated that the EPA should finalize the 2022 Proposal to provide regulatory and business certainty and ensure that investments undertaken to comply with MATS will not be jeopardized. Commenters said that air emissions data from the utility sector show vast reductions in HAP emissions over the last decade, and MATS compliance is a significant contributor to this result. According to the commenters, these achievements have not been without expense to generators and end users. Electric utility commenters noted that owners and operators of coal- and oil-fired EGUs made substantial investments to comply with MATS; the industry has spent upwards of $18 billion since 2012 in capital costs and operations and maintenance costs for various types of control technologies to comply with MATS. Commenters said that owners and operators have also invested in the retirement of older, more costly, and less efficient generating assets (mostly coal-fired) and the shifting of generation to new, cleaner, replacement generation. As a result, commenters explained that over the last decade, the U.S. electricity generation resource mix has changed significantly, in part due to MATS compliance. Commenters said that at this point, the electric utility industry has fully implemented MATS and EGUs have been in continuous compliance with MATS for many years. The capital costs invested to comply with MATS are sunk, these commenters pointed out, but now that these capital expenditures are complete, sources are realizing the value of their investments and anticipate doing so in the future.

Commenters also stated that owners and operators have made business decisions based on the assumption that MATS will remain in place. For example, according to the commenters, EGUs that generate power in wholesale electricity markets have factored continued operation of their pollution controls into bids for those markets. Commenters said that moreover, many investor-owned electric companies are subject to rate reviews by state Public Utility Commissions regarding recovery of their MATS-associated costs. Commenters stated that numerous utilities rely upon the mandated status of MATS in order to recoup expenditures already made to comply with the rule before Public Utility Commission proceedings. According to the commenters, even many industry members not directly regulated by MATS made significant investment decisions in reliance on MATS and the ''appropriate and necessary'' findings, because the costs associated with compliance decisions by the EGUs subject to MATS can influence the dispatch of electricity generated by EGUs that are not regulated by the MATS rule. Commenters said that in fact, compliance decisions can affect wholesale power prices, fuel prices, and dispatch order, and the entire industry made changes to respond to those effects, and in anticipation of those effects.

Other industry commenters stated that the 2020 Final Action reversing the 2016 Supplemental Finding created regulatory uncertainty and litigation risk by weakening the legal underpinnings of the MATS rule with no immediate corresponding regulatory benefits. According to the commenters, this action rendered the MATS rule vulnerable to legal challenges, thereby creating significant financial uncertainty for the electric generating industry. The commenters noted that companies began undertaking efforts to comply with the MATS rule after its promulgation in 2012 and have been in compliance for several years. The commenters stated that these companies already have invested the necessary capital to install controls or made changes to operations at their plants to ensure compliance with the MATS rule. Many companies complying with the MATS rule are subject to ongoing rate reviews regarding recovery of costs associated with complying and removing the legal basis for the MATS rule has made recovery for the costs of MATS compliance uncertain, according to the commenters. Commenters stated that while it may be intuitive that controls that were legally required at the time they were installed are justified, rescinding MATS at this time would provide unnecessary fodder for unreasonable arguments against such cost recovery. Even if companies were to ultimately prevail in challenges to rate recovery for these costs, such challenges would be costly and time intensive, according to the commenters. Commenters noted that these investments were made in reliance on the EPA's prior rulemakings.

Commenters also stated that regulatory certainty is essential to municipalities and cities as well as

power companies for future planning. Commenters said that cities and municipalities are committed to the transition to cleaner energy. According to the commenters, concurrent with this transition, electric companies, public power utilities, and electric cooperatives are making significant investments to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure in order to integrate and deliver balanced mix of central and distributed energy resources reliably and provide resilient electricity to customers. Commenters noted that many companies have set carbon goals and are retiring their coal-fired units, converting to other fuel sources, and expanding generation from renewable sources. Commenters stated that renewable energy projects require financial investment, asset procurement, and permitting, and commissioning clean energy requires time and money. According to the commenters, companies are relying on baseload power from units subject to the MATS rule to support the transition to renewable sources, and account for this power in their long-term planning for the development of new generating assets. Commenters stated that accordingly, certainty around the regulatory requirements that apply to these coal-fired units is important to forecast the lifespans and availability of these units. These commenters explained that if public power utilities must contend with unanticipated new environmental projects for MATS, resources may need to be diverted away from renewable projects to address new MATS-related environmental projects. Commenters noted that public power has fully implemented MATS and has relied on previous investments to reduce HAP in planning for future energy transitions. Therefore, regulatory certainty is critical to ensuring future plans can be sustained to transition to a cleaner energy future, according to the commenters. These commenters claimed that failure to finalize the 2022 Proposal and leaving the MATS rule vulnerable to legal challenge would add unnecessary complexity to companies' clean energy transition plans that already are underway and undermine the progress that has been made to date. Commenters stated that restoring the appropriate and necessary determination enables electric companies to remain focused on getting the energy provided as clean as possible and as fast as possible, while maintaining the reliability and affordability that customers value.

Commenters from several states and environmental organizations stated that the EPA was right to consider reliance interests as part of the ''appropriate and necessary'' finding and noted that consideration of those reliance interests supports retaining the finding. Commenters averred that the EPA's 2020 Final Action did not consider these substantial reliance interests and was thus arbitrary and capricious. Commenters asserted that when an agency changes regulatory policy, it is ''required to assess whether there [a]re reliance interests, determine whether they [a]re significant, and weigh any such interests against competing policy concerns.'' *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1915 (2020). Commenters stated that the EPA was aware that there were concerns among stakeholders that MATS could be rescinded based on the 2020 Final Action, so rather than dismissing any threat to the standards, the EPA should have accounted for harms to the reliance interests related to MATS. These commenters claimed that the EPA failed to do so in the 2020 Final Action. In particular, according to the commenters, the EPA failed to consider the reliance interests of electricity customers, who might be forced to continue to bear the costs of controls that power plant owners and operators had turned off. Nor did the EPA consider reliance interests of utilities that had made the substantial capital expenditures required by the MATS rule and that might, in the absence of an affirmative appropriate and necessary finding, be unable to recover from ratepayers some or all of their investments if deemed imprudent by a Public Utility Commission, according to the commenters.

Commenters stated that legal challenges to the MATS rule will continue to occur if the 2020 Final Action remains in effect. In the 2019 Proposal, the EPA specifically solicited comment on the theory that MATS may—or even must—be rescinded if the EPA reversed the ''appropriate and necessary'' determination because such a determination is a statutory prerequisite to the EPA's authority to promulgate an EGU regulation under CAA section 112(d). Commenters stated that in the end, the EPA concluded in the 2020 Final Action that regulation was necessary but ''not appropriate'' and also decided that EGUs would remain listed under CAA section 112(c)(1), since they can only be delisted through the CAA section 112(c)(9) delisting process, but it remained unclear whether the EPA would have authority to promulgate regulations governing EGUs given the absence of the predicate appropriate and necessary determination. Commenters said that while the EPA did not rescind the MATS in the 2020 Final Action, other stakeholders predicted or indicated that there would be challenges to the EPA's decision not to rescind MATS, possibly leading to a court mandated rescission of the standards. Commenters noted that indeed, the very day that the 2020 Final Action was published in the **Federal Register**, Westmoreland Mining Holdings LLC petitioned for review of the 2020 Final Action on grounds that upon concluding regulation was ''not appropriate'' within the meaning of CAA section 112(n)(1), the EPA was required to rescind MATS (*Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir.)). According to the commenters, by overlooking the risk that the 2020 Final Action would lead to litigation challenging MATS itself, the 2020 Final Action harmed the interests of members of the public who rely on the standards' public health and environmental protections, and the interests of states that depend on MATS to preserve the economic value of their fisheries and to facilitate compliance with other pollution-control requirements.

The EPA did not receive comments that claimed reliance interests in support of maintaining the 2020 Final Action.

Response: The EPA acknowledges the many commenters, including several electric utility industry groups representing investor-owned electric companies, rural electric cooperatives, community-owned utilities, and electric distribution companies, who wrote in support of the 2022 Proposal based on reliance interests, because it provides regulatory and business certainty, and because it ensures industry investments to comply with MATS are not jeopardized.

As discussed in section III.D above, the EPA acknowledges that during prior rulemaking processes related to the appropriate and necessary determination, stakeholders raised related concerns that undermining the threshold finding in order to pave the way to rescinding MATS would have grave economic and health consequences. Utilities reported that they rely upon the mandated status of MATS in order to recoup expenditures already made to comply with the rule before Public Utility Commission proceedings. States asserted that they rely upon the Federal protections achieved by the rule in state

implementation planning and other regulatory efforts. And other industries, such as pollution control companies, have made business decisions based on the existence of MATS. The EPA agrees with commenters here and from prior rulemaking processes that nearly all reliance interests are aligned and weigh in favor of retaining the appropriate and necessary determination, particularly given the significant portion of compliance costs that have already been spent.

The EPA additionally agrees with environmental commenters that the 2020 Final Action failed to appropriately consider reliance interests, which commenters have raised here and which were similarly raised in comments in response to the 2019 Proposal. As noted by commenters, agencies must ''assess whether there [a]re reliance interests, determine whether they [a]re significant, and weigh any such interests against competing policy concerns[ ]'' when changing regulatory policy. *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1915 (2020). Although the 2020 Final Action briefly addressed comments as to reliance interests of maintaining the MATS regulation and reducing regulatory uncertainty by claiming the action did not affect reliance interests because it did not rescind the MATS regulation, the 2020 Final Action failed to address the uncertainty that was created for industry and others by rescinding the appropriate and necessary finding. Indeed, the EPA further agrees with environmental commenters who note that the 2020 Final Action contributed to greater regulatory uncertainty because it led to challenges to the underlying MATS regulation, which were consolidated in *Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir.), and which created uncertainty for the many stakeholders who cite reliance interests in favor of keeping the MATS regulation in place. While such reliance interests are not integral to the EPA's conclusion to revoke the 2020 Final Action, they nonetheless weigh in favor of doing so.

D. Comments on the Administrator's Preferred Framework and Conclusion

1. The EPA's Totality-of-the-Circumstances Approach Is Consistent With Michigan and Shows That Regulation of U.S. EGU HAP Emissions Is Appropriate and Necessary

Comment: Commenters stated that the EPA's totality-of-the-circumstances approach is faithful to the CAA's text and purpose, and abundant record evidence supports the EPA's determination that regulation of power plant HAP emissions remains appropriate and necessary. According to the commenters, the approach is consonant with the Supreme Court's holding in *Michigan* that the term ''appropriate'' encompasses all of the advantages and disadvantages of regulation. Commenters stated that *Michigan* confirmed that the statute does not require the EPA to consider costs in a particular way, and it does not require the EPA to use a formal BCA or attempt to monetize every cost and benefit. Rather, in the view of commenters, *Michigan* expressly recognizes that it is ''up to the Agency (as always, within the limits of reasonable interpretation) how to account for cost.'' *Michigan,* 576 U.S. at 759. Commenters asserted that in the proposed totality-of-the-circumstances approach, the EPA carefully considered and weighed all statutorily relevant factors to determine whether to regulate HAP from power plants, including ''account[ing] for cost.''

Commenters explained that as a first step, consistent with Congress' focus on public health in CAA section 112(n)(1)(A), the EPA considered the human health advantages, in particular the direct health effects, quantified as well as unquantified, of regulating HAP from power plants. Commenters stated that in amending CAA section 112 in 1990, Congress recognized that some benefits of regulation—such as reducing ''the public health consequences of substances which express their toxic potential only after long periods of chronic exposure''—are not readily captured in monetary terms and ''will not be given sufficient weight in the regulatory process when they must be balanced against the present-day costs of pollution control and its other economic consequences.'' S. Rep. No. 101–228 at 182 (1989), reprinted in Legis. History of the Clean Air Act Amendments of 1990. Commenters said that the language and context of CAA section 112's appropriate and necessary determination indicate that the EPA ought to account for the many relevant potential benefits of HAP regulation when making the finding.

Commenters stated that the EPA appropriately considered the distribution of the benefits of such regulation and how they affect the populations most exposed and most vulnerable to the health impacts of air pollutants, the environmental benefits to society of regulating HAP emissions from power plants, and the overall volume of emissions of HAP from power plants. According to the commenters, the EPA then carefully considered, under several different contextual metrics, the varied costs of such regulation, including both the direct costs of compliance as well as the broader costs to society, such as potential increases in retail electricity prices associated with regulation and potential reductions in the reliability of electricity service. Finally, the commenters said, the EPA proposed to conclude that the substantial benefits of reducing HAP from EGUs, which accrue in particular to the most vulnerable members of society, are worth the costs, and after weighing the totality of the circumstances, regulation of HAP from power plants is appropriate. In the view of commenters, the EPA's totality-of-the-circumstances approach to the CAA section 112(n)(1)(A) determination is rationally related to the goals of the statute and is the best effectuation of Congress' intent.

Commenters supported the EPA's decision under a totality-of-the-circumstances approach to prioritize all of the public health benefits of regulating HAP from power plants, whether capable of quantification or not, in line with Congress' clear intent (87 FR 7637). According to the commenters, while Congress did not define the precise methodology that the EPA is to employ when making an appropriate and necessary determination in CAA section 112(n)(1)(A), it clearly communicated that the EPA should focus on the ''hazards to public health . . . as a result of emissions'' from power plants, explicitly directing the EPA to conduct a formal study on that issue to inform its determination. Commenters said that the other studies that Congress authorized the EPA to conduct in CAA section 112(n) further indicate Congress' intent that the EPA pay careful attention to the multiple insidious harms of hazardous air pollution from power plants; Congress directed the EPA to study and consider: the ''health and environmental effects of such emissions'' and the amount (''rate and mass'') of those emissions in CAA section 112(n)(1)(B); and the health risks of even low levels of mercury to sensitive populations in CAA section 112(n)(1)(C). According to commenters, section 112 of the CAA also reflects Congress' concern that HAP emissions may threaten disproportionate risks to those who are most vulnerable; CAA section 112(f)(2) directs the EPA to consider residual risk focusing on lifetime cancer risk to the ''individual most exposed'' as a regulatory trigger.

Commenters noted that other references in CAA section 112 highlight Congress' concern that the EPA exercise its CAA section 112 authority to address even small health and environmental risks posed by HAP (*e.g.,* CAA section 112(b)(3)(D)). Consistent with these congressional objectives, commenters explained that the EPA's totality-of-the-circumstances framework properly accounts for the benefits of HAP regulation that cannot be determined in precise monetary terms but are no less real than those that can be. The benefits—monetized and unmonetized—of regulating HAP emissions from power plants are substantial, according to commenters.

Commenters stated that the Supreme Court explained that '' 'appropriate' is 'the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors.' '' *Michigan,* 576 U.S. at 751 (quoting *White Stallion Energy Ctr., LLC,* 748 F.3d at 1266 (Kavanaugh, J., dissenting)). Commenters asserted that it is thus eminently reasonable for the EPA to make the appropriate and necessary determination by balancing a broad swath of considerations that Congress has indicated are relevant to CAA section 112's goals, including public health, health impacts on the most vulnerable and exposed individuals, environmental effects, and costs. Indeed, courts have routinely blessed agency uses of a totality-of-the-circumstances approach in analogous statutory contexts. *See Catawba County.* v. *EPA,* 571 F.3d 20, 39 (D.C. Cir. 2009) (holding that agency may ''adopt a totality-of-the-circumstances test to implement a statute that confers broad authority''); *Chippewa & Flambeau Imp. Co.* v. *FERC,* 325 F.3d 353, 358–59 (D.C. Cir. 2003) (holding that Congress granted FERC significant discretion ''by enacting [a] 'necessary or appropriate' standard'' and that FERC's ''case-by-case approach'' to making that determination based on a ''series of relevant factors'' was reasonable and consistent with the governing statute). Commenters noted that many states have also adopted similarly wide-ranging analytical frameworks that account for all relevant factors when enacting their own regulatory standards to address certain hazardous (and other) air pollutant emissions from power plants.

Commenters stated that under the totality-of-the-circumstances framework, the record evidence available in 2012 alone is more than sufficient to support a finding that it is appropriate to regulate EGUs under CAA section 112. Commenters noted that at the time, the EPA acknowledged substantial quantified and unquantified HAP-reduction benefits, as well as non-HAP-reduction benefits that the EPA more completely monetized. According to the commenters, information that has become available since the 2011 RIA—including much larger estimates of the health effects of mercury emitted by EGUs, new evidence of the ecological impacts of mercury, compelling research on the health effects of toxic metals and metals mixtures, recent research on the health effects of acid gases, and recent assessments of the science on the health and environmental effects of PM and ozone—confirms the finding that it is appropriate to regulate EGUs' HAP emissions under CAA section 112. Commenters said that the unexpectedly large declines in these emissions since MATS was promulgated only amplify all these considerations. Moreover, the need to address the significant and disproportionate impacts on communities of color and low-income communities from EGU HAP emissions prior to MATS further supports the finding of appropriateness, according to the commenters. Commenters noted that meanwhile, lower natural gas prices, lower costs of pollution controls, and readily available, inexpensive renewable energy have all pushed compliance costs far below the EPA's original projections, which were overestimates even in 2011 based on certain assumptions about the pollution controls that would be needed to comply.

Commenters also stated that the EPA appropriately considered unquantified benefits and co-benefits as part of the totality-of-the-circumstances analysis and that doing so is consistent with other case law, executive guidance, and past EPA practice. Commenters said that the totality-of-the-circumstances approach recognizes that many benefits of reducing toxic air pollution exposure cannot be quantified but that does not mean that these benefits are small, insignificant, or nonexistent. Commenters stated that to argue that these benefits should not factor into whether a pollution control measure is appropriate and necessary because they cannot be quantified runs counter to the law, statutory text and design, and the Administration's stated EJ commitments. Indeed, according to the commenters, OMB's Circular A–4 has long cautioned agencies against ignoring unquantifiable benefits, because the most efficient rule may not have the largest quantified and monetized estimate. It instead directs agencies to consider values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts, according to the commenters.

Commenters stated that even for benefits where quantification is at least theoretically possible, the EPA accurately recognized that it can be extremely difficult and time-consuming to quantitatively estimate the manifold health and environmental benefits of reducing emissions of air toxics. Commenters noted that the harms of HAP are often concentrated, and more studies would be needed to monetize benefits such as reduced lifetime cancer risk or avoided reproductive harm in specific communities. Commenters stated that among other reasons, it is difficult to design population-based epidemiological studies, limited data exist that monitor ambient air pollutant concentrations and individual exposure, insufficient economic research exists that would permit analysts to monetize the health impacts associated with exposure to air toxics, logistical and ethical barriers make it difficult to conduct controlled scientific studies on the impacts of HAP exposures, and the effects of HAP exposures are dispersed less evenly than other types of impacts that are analyzed epidemiologically. For these and other reasons, commenters explained, the EPA is unable to quantify, let alone monetize, anywhere near the full scope of benefits that accrue from regulation of HAP from power plants, including the prevention of myriad health effects like cognitive impairment, cancer, and adverse reproductive effects. Commenters said that these quantification limitations present complications, but the complications do not mean the impacts can be ignored. According to the commenters, the EPA is correct, therefore, to carefully consider potential pathways for assessing their magnitude and scope, as well as to include robust qualitative discussion, to ultimately inform the appropriate and necessary determination. Commenters stated that because important uncertainties include not just the mechanisms of impact but also the extent to which specific populations may suffer, it is incumbent on the EPA to undertake this work to ensure the ensuing HAP protections achieve sufficient levels of protection—even when those levels cannot be absolutely quantified. The totality-of-the-circumstances approach more effectively captures these unquantified or unquantifiable benefits than one that simply weighs monetized costs against those benefits that may currently be

quantified, according to the commenters.

Commenters stated that while the appropriate and necessary finding is lawful and supported on the basis of direct benefits alone, the EPA also can and should consider co-benefits of the MATS rule, as was done here as part of the totality-of-the-circumstances framework. Commenters noted that the co-benefits of the MATS rule include massive health and environmental benefits due to reductions in PM and SO_2 pollution attributable to the MATS controls. Commenters said that multiple elements of the CAA's text and structure show that Congress intended that the EPA take a comprehensive view of regulation's advantages and disadvantages when evaluating its appropriateness, including the full scope of its benefits, according to the commenters. Notably, according to the commenters, CAA section 112(n)(1)(A)'s direction that the EPA assess how effectively control technologies targeting other pollutants, under other provisions of the CAA, were controlling HAP from power plants, demonstrates that Congress did not intend that the EPA take a blinkered view of benefits when regulating under CAA section 112. The commenters stated that is especially true where, as here, doing so would give no weight to reductions in PM and other pollutants that have led to massive public health benefits. Commenters noted that in addition, the Supreme Court stated in *Michigan* that the EPA has flexibility in how it evaluates costs and benefits when making the appropriate and necessary finding and specifically stated that ''an agency may not 'entirely fai[l] to consider an important aspect of the problem' when deciding whether regulation is appropriate.'' *Michigan* v. *EPA,* 576 U.S. 752 (2015) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983)). Commenters said that courts have also agreed in other contexts that ''considering co-benefits . . . is consistent with the [Clean Air Act]'s purpose—to reduce the health and environmental impacts of hazardous air pollutants.'' *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 623–25 (D.C. Cir. 2016) (in a case involving the HAP program under section 112 of the CAA, affirming the EPA's reliance on co-benefits, including ''reductions in emissions of other pollutants,'' to justify more stringent standards for HCl emissions from boilers, process heaters, and incinerators). The commenters said that non-HAP benefits that include preventing thousands of hospitalizations, thousands of heart attacks, and thousands of premature deaths every year (according to the 2011 RIA) surely count as an important aspect of the problem.

Response: For the reasons set forth in section III.D above, and discussed elsewhere in this preamble and the 2023 RTC Document, the EPA agrees with commenters that the EPA's preferred totality-of-the-circumstances approach is consistent with the Supreme Court's decision in *Michigan* and reasonably shows that it is appropriate and necessary to regulate EGU HAP emissions pursuant to CAA section 112. The EPA further agrees that its preferred approach is well suited to the appropriate and necessary finding given the wide array of considerations Congress has indicated are relevant to CAA section 112's goals, including public health, health impacts on the most vulnerable and exposed individuals, environmental effects, and costs, and to properly accounts for the benefits of HAP regulation that cannot be determined in precise monetary terms. Additionally, the EPA agrees with commenters that the EPA's preferred totality-of-the-circumstances approach appropriately considered unquantified benefits as part of the totality-of-the-circumstances analysis, and that such consideration of unquantified benefits is consistent with other case law, executive guidance, and past EPA practice when evaluating public health, equity, and other relevant considerations. The EPA also agrees with commenters that non-HAP emission reduction benefits are appropriate to consider under CAA section 112(n)(1)(A) as explained in section 4.1 of the EPA's 2023 RTC Document.

2. The EPA Failed To Conduct a Weighted Comparison of Costs vs. Benefits as Required by Michigan

Comment: Commenters stated that the totality-of-the-circumstances methodology does not properly consider the important costs related to regulation, nor does it treat those costs equally with the other factors that must be considered. Commenters said that the EPA's proposed approach to cost analysis merely evaluates whether the industry—or the public at large, since the costs of making a product are invariably passed on to customers and ratepayers—can afford the regulation. Commenters stated that in the 2022 Proposal, the EPA assessed compliance costs based on various metrics (*e.g.,* compliance costs as percent of power sector sales; compliance expenditures compared to power sector's annual expenditures; impact on retail price of electricity; impact on power sector generating capacity) that are unrelated and not compared to benefits. According to the commenters, the proper analysis is not whether the industry (or society at large) can afford the costs of compliance, but whether the costs of compliance are worth it based on the total benefits derived from regulation. In the view of commenters, under *Michigan,* the EPA cannot justify imposing new requirements on sources simply because it believes that the industry in question (or the American economy) could afford to foot the bill of increased regulation. Commenters noted that the utility sector is a large industry, and the American economy is the largest in the world. Commenters asserted that the EPA would be hard-pressed to find the American economy and the utility sector cannot afford the cost of virtually any regulatory action, especially when such action is viewed in isolation. That conclusion, however, does not mean the benefits of the regulation justify its costs, according to the commenters. Commenters said that in short, a benefit-cost framework requires a comparison of benefits and costs, not just affordability of the costs.

Commenters stated that in addition to mischaracterizing the costs and benefits, the 2022 Proposal also failed to compare the two. According to the commenters, in *Michigan,* the Court made clear that something more than just a general review of all available information is needed. Commenters said that the Court did not simply ask the EPA to list or describe both benefits and costs—an analysis is required to determine whether the benefits justify the costs, and the EPA must weigh them, one against the other. These commenters averred that *Michigan* follows other Supreme Court decisions affirming the principle that agencies, to act reasonably, must weigh the costs and benefits of actions (*Indus. Union Dep't, AFL–CIO* v. *API,* 448 U.S. 607, 645, 668 (1980); *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 225–26, 232–33 (2009)). Further, these commenters argued that the comparison of costs and benefits is necessary for reasonable decision-making to occur. Commenters asserted that the 2022 Proposal indicates that the EPA weighed the costs and benefits, but it provides no further explanation as to how that weighing actually occurred, according to the commenters. For example, according to the commenters, the EPA did not explain why and how the non-monetized benefits of the action in particular outweighed the costs.

Commenters expressed that the 2022 Proposal stated that the EPA considers all of the advantages of reducing emissions of HAP regardless of whether those advantages can be quantified or monetized, and the EPA explained why almost none of those advantages can be monetized. However, even if benefits cannot be monetized, the EPA must evaluate and explain whether the specific benefits the EPA identified are worth the estimated cost, according to the commenters. Instead, commenters said that the EPA summarily stated that ''[a]fter considering and weighing all of these facts and circumstances . . . the Administrator proposes to conclude that the substantial benefits of reducing HAP from EGUs . . . are worth the costs'' (87 FR 7668). The commenters stated that other than conclusory statements claiming the asserted benefits ''outweigh'' costs, the EPA nowhere weighed anything at all. According to the commenters, the EPA is certainly correct that the Supreme Court in *Michigan* stopped short of requiring the EPA to conduct a ''formal cost-benefit analysis'' and deferred to the EPA's judgment on how to weigh costs and benefits. But the Court's recognition of the difficulty of the task did not sway its opinion that the EPA must weigh all, and only, the relevant factors in some reasonable fashion, in the view of commenters. The commenters said that a single sentence conclusion does not meet the standard set forth in *Michigan.*

Commenters stated that the EPA noted in the 2022 Proposal that available data and methods currently preclude a full and accurate quantitative accounting of the impacts of reducing HAP emissions from EGUs and a monetization of these impacts. Commenters agreed that MATS may have benefits beyond those that can be reduced to the strictly economic but stated that the challenge in assessing such benefits is profound. Therefore, it is most appropriate to rely on monetized benefits in an analysis of costs versus benefits for a regulation, as opposed to potential benefits for which value cannot be measured, according to the commenters. Even considering the EPA's proposed attempt to monetize the value society places on avoiding potential effects and the revised cost estimates, commenters stated that the disparity of costs versus benefits for this regulation is not compatible with a finding that regulation would be appropriate. Commenters said that in the absence of compelling and significant benefits from reductions in HAP from coal- and oil-fired EGUs, the costs of reducing HAP from these sources must be considered excessive.

Commenters stated that in the 2022 Proposal, the EPA considered the potential benefits of ancillary reductions of non-HAP such as SO_2, direct $PM_{2.5}$, and other $PM_{2.5}$ and ozone precursors because they are co-emitted with HAP and the controls necessary to reduce HAP emissions from EGUs often reduce these pollutants as well. However, those non-HAP emissions are also regulated under the Cross State Air Pollution Rule and Ozone Season NAAQS, according to the commenters. Commenters said that the benefits associated with such reductions should be considered alternatively and independently, not in support of a totality-of-the-circumstances approach under CAA section 112(n)(1)(A). In addition, according to the commenters, in applying the totality-of-the-circumstances methodology, the EPA stated that, in considering and weighing advantages to regulations against costs, the EPA would be ''giving particular weight'' to the examination of the public health hazards reasonably anticipated to occur as a result of HAP emissions from EGUs, and ''the risks posed by those emissions to exposed and vulnerable populations.'' According to the commenters, neither CAA section 112(n)(1)(A) nor the congressional findings and purposes stated in CAA section 101 justify giving ''particular weight'' as opposed to weight to the public health hazards from HAP emissions from EGUs in the calculation of advantages and disadvantages.

Other commenters said the EPA should conduct a formal cost-benefit analysis for the decision to impose regulations and make available to the public all the information that the EPA relied upon for that analysis. Commenters expressed that the EPA should also thoroughly articulate those costs and benefits related to HAP reductions and identify on the record the precise costs and benefits that can and cannot be monetized. Commenters stated that the EPA should clearly identify the basis, consideration, and weight given each variable in determining whether it is ''appropriate and necessary'' to regulate HAP emissions from EGUs. Both the ''cost reasonableness'' test put forward in the 2016 Supplemental Finding and the totality-of-the-circumstances test in the 2022 Proposal are inadequate, according to the commenters.

Response: The EPA disagrees with these commenters and, for reasons set forth in section III.D above, believes that the totality-of-the-circumstances methodology is fully consistent with the *Michigan* Court's ''expectation that the Agency should weigh benefits against costs.'' The EPA maintains that its preferred totality-of-the-circumstances approach, in which the Administrator weighs all of the advantages of regulation against all of its disadvantages to determine whether regulation is worth it, is a reasonable interpretation of CAA section 112(n)(1)(A)'s requirement to determine whether it is appropriate and necessary to regulate EGU HAP emissions under CAA section 112 and is consistent with the Supreme Court's decision in *Michigan* v. *EPA.* The Supreme Court instructed the EPA to determine a reasonable way to ''pay[ ] attention to the advantages and disadvantages of [our] decisions,'' *Michigan,* 576 U.S. at 753, in determining whether it is appropriate to regulate coal- and oil-fired EGUs under section 112 of the CAA. The Court held that a formal BCA is not required under the statute and concluded that the EPA has discretion to decide (within the limits of reasonable interpretation) how to consider cost. *Id.* at 759.

Under CAA section 112(n)(1)(A), Congress directed the EPA to regulate EGU HAP emissions after considering the results of the ''study of hazards to public health reasonably anticipated to occur as a result of emissions'' from such facilities. In CAA sections 112(n)(1)(B) and (C), Congress directed further studies to examine the health and environmental effects of EGU mercury emissions, and to examine threshold levels of mercury concentrations which may be consumed in fish tissue (including in sensitive populations) without adverse effects to public health. Accordingly, the EPA finds it is reasonable to conclude that, in addition to costs, the information from those studies is important and relevant to a determination of whether HAP emissions from EGUs should be regulated under CAA section 112. *See also Michigan,* 576 U.S. at 753–54 (citing CAA sections 112(n)(1)(B) and (C), its caption, and the additional studies required under those subparagraphs as relevant statutory context for the appropriate and necessary determination).

The EPA recognized that benefits like those associated with reduction of HAP can be difficult to monetize, and this incomplete quantitative characterization of the positive consequences can underestimate the monetary value of net benefits. This is well-established in the economic literature. As noted in OMB Circular A–4, ''[w]here all benefits and costs can be expressed as monetary units, BCA provides decision makers

with a clear indication of the most efficient alternative.'' Circular A–4 at 2. However, ''[w]hen important benefits and costs cannot be expressed in monetary units, BCA is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.'' Circular A–4 at 10.

Weighing factors and circumstances surrounding potential regulation is an inherent aspect of agency decision-making, which necessarily requires tradeoffs and reasonable exercises of discretionary judgment. *See White Stallion,* 748 F.3d at 1266 (''All regulations involve tradeoffs, and . . . Congress has assigned EPA, not the courts, to make many discretionary calls to protect both our country's environment and its productive capacity.'') (Kavanaugh J., dissenting). Further, the D.C. Circuit held in *Catawba Cty.* v. *EPA* that ''[a]n agency is free to adopt a totality-of-the-circumstances test to implement a statute that confers broad authority, even if that test lacks a definite 'threshold' or 'clear line of demarcation to define an open-ended term.' '' 571 F.3d 20, 37 (D.C. Cir. 2009); *see also PDK Labs.* v. *DEA,* 438 F.3d 1184, 1194 (D.C. Cir. 2006) (''Agencies routinely employ multifactor standards when discharging their statutory duties, and we have never hesitated to uphold their decisions when adequately explained.'').

Exercising its discretion, and consistent with the statute and with past court decisions, the EPA determined its preferred totality-of-the-circumstances approach is particularly well suited to the CAA section 112(n)(1)(A) appropriate and necessary finding in part because the EPA is unable to quantify or monetize many of the effects associated with reducing HAP emissions from EGUs. Indeed, the D.C. Circuit has recognized that ''requiring EPA to wait until it can conclusively demonstrate that a particular effect is adverse to health before it acts is inconsistent with both the [Clean Air] Act's precautionary and preventive orientation and the nature of the Administrator's statutory responsibilities.'' *Lead Industries Ass'n* v. *EPA,* 647 F.2d 1130, 1155 (D.C. Cir. 1980).

Nor does the EPA agree with commenters that the EPA failed to compare in a meaningful way the benefits of this action against its costs, or that the 2022 Proposal did not provide an explanation of how this weighing actually occurred. The Supreme Court has said that a rule will be found to be arbitrary and capricious ''if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'' *State Farm,* 463 U.S. at 43 (U.S. 1983). Further, an agency is required to give ''some definitional content'' to vague statutory terms by ''defining the criteria it is applying,'' because a refusal to do so is equivalent to ''simply saying no without explanation.'' *Pearson* v. *Shalala,* 164 F.3d 650, 660 (D.C. Cir. 1999). Here, the EPA has given meaning to its understanding of the appropriate and necessary determination by laying out all of the many factors and criteria that it considered based on a thorough examination of the statute in light of the *Michigan* decision.

The Administrator must exercise his judgment in deciding whether the disadvantages of regulation justify its advantages and the EPA need not demonstrate that his decision is the same decision that would be made by another Administrator or a reviewing court. An agency action need not be the only approach or even the approach that a reviewing court might find most reasonable. Instead, the test is ''whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'' *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402, 416 (U.S. 1971); *see also ExxonMobil Gas Mktg. Co.* v. *FERC,* 297 F.3d 1071, 1083–1084 (D.C. Cir. 2002) (''Accordingly, we will uphold the Commission's application of the test as long as it gives 'reasoned consideration to each of the pertinent factors' and articulates factual conclusions that are supported by substantial evidence in the record.'' (citation omitted)). Reasonable people, and different decision-makers, can arrive at different conclusions under the same statutory provision, but those conclusions must be reasonable under the statutory structure. The EPA does not agree with the commenters' positions that HAP emissions from EGUs do not pose significant hazards to public health and the environment and that the cost of compliance with MATS is unreasonable. This factual disagreement with the commenters does not render the EPA's statutory interpretation of how to consider cost and the Administrator's weighing of the relevant factors arbitrary. Absent clear direction from the statute and a demonstration that the Administrator has made a ''clear error of judgment,'' the EPA's interpretation and analysis should govern.

Moreover, contrary to commenters' assertions, the EPA did evaluate and explain in detail in section III.D above, why the EPA views the advantages of EGU HAP regulation as outweighing the disadvantages of doing so. Under the EPA's preferred approach, the EPA considered the advantages of EGU HAP reductions as informed by types of information the statute directed the EPA to consider under the studies required by CAA section 112(n)(1). In particular, the EPA considered the public health benefits of regulation pursuant to CAA section 112(n)(1)(A), and the EPA considered the rate and mass of EGU mercury emissions, the health and environmental effects of such emissions, and the threshold level of mercury concentrations in fish tissue which may be consumed (even by sensitive populations) without adverse effects to public health consistent with the studies required under CAA section 112(n)(1)(B) and (C). The EPA determined that the benefits of regulating EGU HAP emissions are great and doing so addresses serious risks to vulnerable populations that remained after implementation of the ARP and other controls on the power sector under the CAA. The EPA placed considerable weight on such benefits given the directive to do so in CAA section 112(n)(1)(A) and Congress' clear purpose in amending CAA section 112 in 1990. See section II of the 2022 Proposal.

The EPA also considered compliance costs in a comprehensive manner by placing such costs in the context of the effect those expenditures have on the economics of power generation more broadly, the reliability of electricity, and the cost of electricity to consumers. Similar to the EPA's evaluation of benefits, the EPA's comprehensive analysis of disadvantages and costs of regulation is informed by the types of information the EPA is required to consider under CAA section 112(n)(1). The EPA gave particular consideration to potential adverse impacts that could be felt by the public via increased electricity prices and reduced access to a reliable power supply but determined that EGU HAP regulation would not and has not caused such deleterious effects to the public. The EPA considered costs based on the record before the EPA at the time we issued the regulation and made the threshold determination in 2012, and based on new information, which suggests cost projections used in the 2016 Supplemental Finding likely

overestimated actual costs of compliance by billions of dollars. While under both considerations, costs were large in absolute terms, the EPA's analyses, discussed in detail in sections III.B and III.D above, found compliance costs are within the range of other expenditures by the power sector and were commensurate with revenues generated, and that these expenditures would not and did not have any significant impacts on electricity prices or reliability.

After considering and weighing all of the facts and circumstances associated with advantages and disadvantages of regulating EGU HAP, the Administrator determined, pursuant to his discretion under the CAA and prior case law, that regulation is appropriate and necessary under CAA section 112(n)(1)(A).

The EPA also disagrees with commenters that its consideration of costs is confined to whether the power sector can bear the cost of compliance. These commenters mischaracterize this action. In making the appropriate and necessary determination, the EPA is not simply determining it is appropriate to regulate EGU HAP because industry (or the country in general) can bear the cost of regulation, as some commenters suggest. Rather, the EPA is making a reasonable decision within its discretion that regulation is appropriate consistent with the Supreme Court's direction in *Michigan* v. *EPA* and informed by the studies required by CAA section 112(n)(1), which is founded upon consideration of whether the cost of regulatory compliance outweighs the benefits from the reduction in HAP. That inquiry includes consideration of the disadvantages conferred by expending those compliance costs and advantages conferred by reducing HAP. So, it is relevant to the EPA whether expending those compliance costs would affect the power sector's ability to provide reliable and affordable electricity. But that does not mean that the EPA has determined that regulation is appropriate so long as the regulated industry (or the country in general) can bear the expense regardless of the regulation's benefits. And the EPA has not made such a determination. Rather, in this action the EPA carefully weighed all of the advantages and disadvantages, consistent with *Michigan's* direction, and the Administrator determined that the benefits of MATS are worth its costs. *See Michigan* v. *EPA,* 576 U.S. at 755 (''[CAA section 112(n)(1)(A)'s] broad reference to appropriateness encompasses multiple relevant factors (which include but are not limited to cost)'').

As the EPA has noted elsewhere in its response to comments, under the EPA's preferred totality-of-the-circumstances approach the EPA found it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under CAA section 112(n)(1)(A) regardless of non-HAP emission reduction benefits. However, the EPA determined that if it considers non-HAP emission reduction benefits, such as the benefits (including reduced mortality) of coincidental reductions in PM and ozone that flow from the application of controls on HAP, the balance weighs even more heavily in favor of regulating HAP emissions from coal- and oil-fired EGUs. Considering non-HAP emission reduction benefits is consistent with the statute, economic principles, and long-standing Federal agency practice. For further discussion in support of the EPA's consideration of non-HAP emission reduction benefits, see section 4.1 of the 2023 RTC Document.

The EPA further disagrees with commenters that CAA section 112(n)(1)(A) does not permit the EPA to give ''particular weight'' to sensitive populations. Congress directed the NIEHS to conduct a study to determine the threshold level of exposure under which no adverse effect to human health would be expected to occur, even considering exposures of sensitive populations, and throughout CAA section 112, Congress placed special emphasis on regulating HAP from sources to levels that would be protective of those individuals most exposed to HAP emissions and most sensitive to those exposures. Because the EPA was directed by Congress to consider the adverse effects of HAP emissions on the most sensitive populations, it is reasonable for the EPA to give particular weight to such considerations.

Finally, as explained in section III.E above, even assuming that a formal BCA is required to support the EPA's appropriate and necessary finding, the EPA has provided such an analysis to independently support its conclusion.

E. Comments on the Administrator's Benefit-Cost Analysis Approach and Conclusion

1. Use of Benefit-Cost Analyses in the Appropriate and Necessary Determination

Comment: Numerous commenters asserted that the use of the formal BCA framework was consistent with CAA section 112(n)(1)(A) statutory directive to the EPA, as interpreted by the court in *Michigan* v. *EPA,* and that the formal BCA approach was a reliable, analytic approach to tally benefits and costs of regulating EGUs under CAA section 112. Some commenters asserted that the formal BCA should be the primary driver for making an appropriate and necessary determination. They stated the formal BCA discharged the *Michigan* court's directive that costs were a ''centrally relevant factor'' in making an ''appropriate and necessary'' decision.

Response: The EPA agrees that a formal BCA, as represented by the original MATS 2011 RIA, is a meaningful alternative approach that further affirms the appropriate and necessary finding. However, given the challenges associated with quantifying and monetizing the full suite of adverse effects from EGU HAP emissions on human health and ecosystems, especially in a way that considers the impacts on the most susceptible populations, the formal BCA as provided in the original MATS 2011 RIA should not be the primary approach for determining whether it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112(n)(1)(A). The EPA notes that the Supreme Court in *Michigan* specified the EPA was not required to conduct a BCA, but that it was up to the EPA's reasonable discretion how to account for costs. 576 U.S. at 759 (''We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.''). Rather than relying primarily on a formal BCA, as described in the 2022 Proposal, the EPA prefers an approach which is rooted in the *Michigan* court's direction to ''pay[ ] attention to the advantages and disadvantages of [our] decisions.'' 576 U.S. at 753. Hence, the EPA considers all the advantages of reducing emissions of both HAP and any co-emitted criteria pollutants, regardless of whether those advantages can be quantified or fully monetized. The EPA weighs those advantages against all of the disadvantages of regulation. In following this totality-of-the-circumstances approach, the EPA found that the advantages of this final action (both quantified and unquantified) are substantial and far outweigh the disadvantages.

2. Considering $PM_{2.5}$ and Other Non-HAP Benefits in the Context of a CAA Section 112(n) Determination

Comment: Several commenters stated that, while the BCA approach offered a framework for weighing the advantages and disadvantages of regulation consistent with *Michigan* v. *EPA,* the EPA's formal BCA approach utilized in this action suffered from a flaw, as it focused on factors not relevant to what the EPA must find under CAA section 112(n). In the view of these commenters, since CAA section 112(n) was focused solely on HAP and was clearly intended to avoid, not rely on, duplicative regulations, the EPA's formal BCA should not include consideration of non-HAP EGU benefits such as those that accrue due to associated reductions in $PM_{2.5}$ or other non-HAP emissions. These commenters stated that the definition of ''benefits'' should exclude: (a) reductions that would occur anyway in absence of the rule due to non-regulatory drivers or due to other rules; (b) pollutant reductions below national health-based standards; (c) benefits that cannot be realized within the U.S. where the EPA's regulatory authority resides; and (d) benefits from co-emitted non-HAP emissions.

Response: The EPA disagrees with the commenters' interpretation of what factors are relevant when comparing the benefits and costs of a regulation. Consistent with economic theory and best practices, the EPA Guidelines for Preparing Economic Analyses direct the EPA to account for all positive consequences of a regulatory action, including those that are coincident to the policy objective; this is integral to proper economic analyses determining whether an action yields net benefits to society. The EPA's Guidelines describe the underlying rationale of a formal BCA, which is to evaluate the action according to the potential ''Pareto improvement criterion.'' The criterion, which is described in detail in the Guidelines, requires ''measuring net benefits by summing all of the welfare changes *for all affected groups*'' to answer the question of whether an action increases economic efficiency (p. 1–4, emphasis added). Consistent with scientific principles underlying BCA, both OMB Circular A–4 and the EPA's Guidelines for Preparing Economic Analyses direct the EPA to include all benefits in a BCA. Per Circular A–4, OMB instructs: ''Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.'' The reductions in criteria pollutants that are coincident with the MATS control technologies designed to reduce HAP emissions have known positive impacts on human health. Thus, quantifying and considering the benefits from non-HAP like $PM_{2.5}$ in the MATS BCA is entirely consistent with economic best practices. The EPA notes this approach is also entirely consistent with executive guidance on regulatory review, longstanding EPA practice, and the statute and legislative history of the MATS rule (see section II.B of the 2022 Proposal).

In response to the comment that benefits that would occur due to other rules or non-regulatory drivers should be excluded, we note that in the MATS BCA, the billions of dollars of benefits attributable to reductions in premature mortality from improving $PM_{2.5}$ air quality are exclusively attributable to the *ex-ante* projected emissions reductions for the MATS action and are not attributable to any other regulation. The EPA continues to assert that the EPA's practice to quantify health benefits of reducing $PM_{2.5}$ concentrations both above and below the levels of the NAAQS is reasonable and well-supported by scientific evidence. As noted by the EPA Administrator in the most recent PM NAAQS review,[82] the available evidence from epidemiologic, toxicologic and controlled human exposure studies does not reveal a ''population threshold, below which it can be concluded with confidence that $PM_{2.5}$-related effects do not occur. . .''.

V. Summary of Cost, Environmental, and Economic Impacts

The EPA estimates that there are currently 519 existing EGUs located at 250 facilities that are subject to the MATS rule. Because the EPA is not amending the MATS rule, there are no cost, environmental, or economic impacts as a result of this action. However, finalizing this affirmative threshold determination provides important certainty about the future of MATS for regulated industry, states, other stakeholders, and the public.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not project any incremental costs or benefits associated with this action because it does not impose standards or other requirements on affected sources. However, finalizing this affirmative threshold determination provides important certainty about the future of MATS for regulated industry, states, other stakeholders, and the public.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0567. This action does not impose an information collection burden because the EPA is not making any changes to the information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The EPA does not project any incremental costs or benefits associated with this action because it does not impose standards or other requirements on affected sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

[82] U.S. EPA (2020), *Review of the National Ambient Air Quality Standards for Particulate Matter: Final Action.* EPA–HQ–OAR–2015–0072; FRL–10018–11–OAR. *https://www.govinfo.gov/content/pkg/FR-2020-12-18/pdf/2020-27125.pdf.*

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The Executive order defines tribal implications as ''actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Revocation of the 2020 determination that it is not appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under CAA section 112 and affirmation that it remains appropriate and necessary to regulate HAP emissions from EGUs after considering cost would not have a substantial direct effect on one or more tribes, change the relationship between the Federal Government and tribes, or affect the distribution of power and responsibilities between the Federal Government and Indian tribes because MATS remains in place. Thus, Executive Order 13175 does not apply to this action. While this action does not have tribal implications under Executive Order 13175, the EPA sent a letter to all federally recognized Indian tribes inviting consultation on this action. The EPA did not receive any requests from consultation from Indian tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action does not impose new regulatory requirements that might present a disproportionate risk to children. This action reaffirms that it is appropriate and necessary to regulate HAP emissions from U.S. EGUs, but does not impose control requirements, which were implemented through MATS (77 FR 9304; February 16, 2012). While this action does not impose or change any standards or other requirements, it addresses the underpinning for the HAP emission standards in MATS. The EPA believes the reductions in HAP emissions achieved under MATS have provided and will continue to provide significant benefits to children in the form of improved neurodevelopment and respiratory health and reduced risk of adverse outcomes. Analyses supporting the 2012 MATS Final Rule estimated substantial health improvements for children in 2016 in the form of 130,000 fewer asthma attacks, 3,100 fewer emergency room visits due to asthma, 6,300 fewer cases of acute bronchitis, and approximately 140,000 fewer cases of upper and lower respiratory illness. See 77 FR 9441 (February 16, 2012). Reaffirming the appropriate and necessary determination assures those benefits will continue to accrue among children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is not anticipated to have impacts on emissions, costs, or energy supply decisions for the affected electric utility industry as it does not impose standards or other requirements on affected sources.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations, and/or indigenous peoples. As documented in both the NAS Study and Mercury Study, fish and seafood consumption is the primary route of human exposure to methylmercury originating from U.S. EGUs, with populations engaged in subsistence-levels of consumption being of particular concern. As shown in section III.A.5 of the 2022 Proposal, certain people of color, low-income populations, and indigenous populations are more likely to experience elevated exposures, thus higher health risks relative to the general population due to subsistence fishing. Furthermore, subpopulations with the higher exposure tend to overlap with those subpopulations that are particularly vulnerable to small changes in health risk because of other social determinants of health (*e.g.,* lack of access to health care and access to strong schooling), thereby compounding the implications of the implications of mercury exposure.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples because it does not impose standards or other requirements on affected sources and is limited in scope to only consider whether it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs. While this action does not impose or modify any standards or other requirements, it provides the underpinning for the emission standards regulating HAP from EGUs. The EPA additionally identified and addressed EJ concerns by reaffirming the appropriate and necessary determination, assuring that the reduction in risks achieved by MATS continue. Information supporting this Executive order review is provided in sections III.A.4 and IV.A.3 of this preamble as well as the 2021 Risk TSD. While this action is limited in scope and does not have tribal implications as discussed under Executive Order 13175, in addition to a public hearing, the EPA provided opportunities for meaningful involvement through actions such as offering consultation on the proposed action to Indian tribes, providing an overview of the proposed action and opportunity for tribal input on the February 2022 National Tribal Air Association Air Policy Update Call, and providing an overview of the proposed action and opportunity for input on the March 2022 EPA Monthly National Community Engagement Call.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Michael S. Regan,

Administrator.

[FR Doc. 2023–03574 Filed 3–3–23; 8:45 am]

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Part IV

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Air Cleaners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–TP–0036]

RIN 1904–AF26

Energy Conservation Program: Test Procedure for Air Cleaners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions, a test procedure, and sampling and representation requirements for air cleaners. Currently, air cleaners are not subject to U.S. Department of Energy (DOE) test procedures or energy conservation standards. DOE is establishing a test procedure for measuring the integrated energy factor of air cleaners. The test method references the relevant industry standard, with certain modifications.

DATES: The effective date of this rule is April 5, 2023.

The incorporation by reference of certain materials listed in the rule is approved by the Director of the Federal Register on April 5, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-TP-0036.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 449–9387. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into part 430:

ANSI/AHAM AC–1–2020, ''Method for Measuring Performance of Portable Household Electric Room Air Cleaners,'' ANSI-approved December 2020, including AHAM Standard Interpretation on September 19, 2022 (AHAM AC–1–2020).

AHAM AC–7–2022, ''Energy Test Method for Consumer Room Air Cleaners,'' copyright 2022.

Copies of AHAM AC–7–2022 and AHAM AC–1–2020 can be obtained from the Association of Home Appliance Manufacturers (AHAM), 1111 19th Street NW, Suite 402, Washington, DC 20036; or *www.aham.org/AHAM/AuxStore.*

ASTM E741–11(2017), ''Standard Test Method for Determining Air Change in a Single Zone Means of a Tracer Gas Dilution,'' Approved September 1, 2017.

Copies of ASTM E741–11(2017) can be obtained from ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or *www.astm.org.*

IEC 62301 Ed. 2.0, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0, 2011–01.

Copies of IEC 62301 Ed. 2.0 can be obtained from the International Electrotechnical Commission (IEC), 3 Rue de Varembe, Case Postale 131, 1211 Geneva 20, Switzerland; or *webstore.iec.ch.*

See section IV.N of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

On July 15, 2022, DOE published a final determination (July 2022 Final Determination) in which it determined that air cleaners qualify as a ''covered product'' under the Energy Policy and Conservation Act, as amended (EPCA).[1] 87 FR 42297. DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kilowatt-hours (kWh) per year. *Id.* Currently, no energy conservation standards or test procedures are prescribed by DOE for air cleaners. The following sections discuss DOE's authority to establish test procedures for air cleaners and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2]

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflects the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency, referred to as ''covered products.'' [3] In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) To classify a consumer product as a covered product, the Secretary must determine that classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA and the average annual per household [4] energy use by products of such type is likely to exceed 100 kWh (or British thermal unit (Btu) equivalent) per year. (42 U.S.C. 6292(b)(1))

As stated, DOE has determined that air cleaners are covered products. 87 FR 42297.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)); and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the IEC Standard 62301 [5] and IEC Standard 62087 [6] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule consistent with its authority and these obligations.

B. Background

DOE has not previously conducted a test procedure rulemaking for air cleaners. As stated, DOE determined in the July 2022 Final Determination that: coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA; the average U.S. household energy use for air cleaners is likely to exceed 100 kWh per year; and thus, air cleaners qualify as a ''covered product'' under EPCA. 87 FR 42297.

On January 25, 2022, DOE published a request for information (January 2022 RFI) seeking comments on potential test procedure and energy conservation standards for air cleaners. 87 FR 3702.

On August 23, 2022, the American Council for an Energy-Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), AHAM, Consumer Federation of America (CFA), Natural Resources Defense Council (NRDC), New York State Energy Research and Development Authority (NYSERDA), and Pacific Gas and Electric Company (PG&E), collectively, the ''Joint Stakeholders,'' submitted a ''Joint Statement of Joint Stakeholder Proposal On Recommended Energy Conservation Standards And Test Procedure For Consumer Room Air Cleaners'' (Joint Proposal), which includes negotiated energy conservation standards for air cleaners and the related test procedures.[7]

[3] The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

[4] DOE has defined ''household'' to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition: *Group quarters* means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail, or correctional institution. *Housing unit* means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters. *Separate living quarters* means living quarters: to which the occupants have access either: directly from outside of the building, or through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

[5] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[6] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[7] Available as document number 16 in the docket for this rulemaking.

DOE published a notice of proposed rulemaking (NOPR) for the test procedure on October 18, 2022 (October 2022 NOPR), presenting DOE's proposals to establish a test procedure for air cleaners. 87 FR 63324. DOE held a public meeting related to this NOPR on November 9, 2022 (hereafter, the NOPR public meeting).

DOE received comments in response to the October 2022 NOPR from the interested parties listed in Table I.1. This list excludes non-substantive comments submitted to the docket.[8]

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE OCTOBER 2022 NOPR

Commenter(s)	Reference in this final rule	Comment number in the docket	Commenter type
Anonymous	Anonymous	19	Individual.
Robert Frey	Frey	22	Individual.
Madison Indoor Air Quality	MIAQ	26	Manufacturer.
Dyson, Inc	Dyson	27	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	28	Efficiency Organization.
Asthma and Allergy Foundation of America	AAFA	29	Health Organization.
PG&E, San Diego Gas & Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	30	Utilities.
Carrier Global Corporation	Carrier	31	Manufacturer.
Home Ventilating Institute	HVI	32	Trade Association.
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	33	Trade Association.
ACEEE, ASAP, AHAM, CFA, NRDC, NYSERDA	Joint Commenters	34	Efficiency Organizations, Consumer Organization, and Trade Association.
Daikin U.S. Corporation	Daikin	35	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[9] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE establishes a new test procedure at 10 CFR part 430, subpart B, appendix FF (appendix FF) for air cleaners that would include methods to (1) measure the performance of the covered product and (2) use the measured results to calculate an integrated energy factor (IEF) to represent the energy efficiency of an air cleaner.

The test procedure established by this final rule includes measurements of smoke clean air delivery rate (CADR) and dust CADR, which are used to calculate $PM_{2.5}$ [10] CADR, and active mode and standby mode power consumption, which are used to calculate annual energy consumption (AEC). $PM_{2.5}$ CADR and AEC are required to calculate IEF. Newly established appendix FF also includes measurements of pollen CADR and calculation of effective room size for representation purposes. For consistent and uniform measurement of these values, DOE is incorporating by reference the industry standards AHAM AC–7–2022, AHAM AC–1–2020, and IEC 62301 Ed. 2.0. Specifically, DOE is specifying the following provisions from within the referenced industry standards:

(1) From AHAM AC–7–2022, the following items:

(a) Definition of ''conventional room air cleaners'' in 10 CFR 430.2, which is used to specify the scope of the air cleaners test procedure in the new appendix FF;

(b) Definitions of terms that are relevant to the test procedure;

(c) Test setup requirements for electrical supply and test chamber, which additionally include a reference to AHAM AC–1–2020;

(d) Instrumentation requirements for power measuring instruments and temperature and relative humidity measuring devices;

(e) Active mode and standby mode power measurements; the standby mode power measurement method additionally includes a reference to IEC 62301 Ed. 2.0 for the test conduct; and

(f) Calculations for $PM_{2.5}$ CADR, AEC, and IEF.

(2) From AHAM AC–1–2020, test methods for determining the pollen CADR, smoke CADR, and dust CADR; calculation of effective room size; and test chamber construction and equipment.

This final rule also specifies the sampling plan and representations for air cleaners at 10 CFR 429.67. DOE also specifies rounding requirements for the measured and calculated values of the air cleaners test procedure.

DOE has determined that the new test procedure described in section III of this document and adopted in this final rule will produce measurements of energy use that are representative of an average use cycle and are not unduly burdensome to conduct. Discussion of DOE's actions are addressed in detail in section III of this document. Additionally, DOE provides estimates of the cost of testing in section III.L of this document. DOE notes that there are currently no energy conservation standards prescribed for air cleaners.

The effective date for the new test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Beginning on the compliance date of any energy conservation standards for air cleaners, any representations with respect to the energy use or efficiency of

[8] EERE–2021–BT–TP–0036–0021.

[9] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for air cleaners. (Docket No. EERE–2021–BT–TP–0036, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[10] ''$PM_{2.5}$'' refers to particulate matter that are nominally 2.5 micrometers (μm) in width or smaller. ''Smoke'' refers to cigarette smoke as defined in section 3.3.1 of AHAM AC–1–2020, which means smoke produced by burning cigarette tobacco with air forced through the cigarette's filter having particle sizes detected from 0.01 μm to 1.0 μm diameter.

these products, including those made for certification purposes, must be made in accordance with the test procedure established in this final rule.

III. Discussion

A. General Comments

In the October 2022 NOPR, DOE presented its proposed test procedure for air cleaners and requested stakeholder feedback on several topics including test procedure scope, industry standards, definitions, test conditions, instrumentation, active and standby mode tests, representations, and sampling plan. 87 FR 63324. While DOE addresses topic-specific comments in the following sections, general comments are summarized in the following paragraphs.

An anonymous commenter stated that the government should not impose regulations on air cleaners because of its private use, commerce, and own power costs. Individuals use such devices for many different purposes, including medical needs, stress inducing factors, or maintaining overall health. The anonymous commenter stated that regulation would force consumers to shut down machines that they need in order to function efficiently on a daily basis. Additionally, the anonymous commenter suggested rules could stop the manufacturing and commerce of certain products and create difference between different manufacturers within the market by forcing a net loss to some companies and not others. According to the anonymous commenter, a large pivotal governmental role in regulating areas of commerce goes against the free market put in place. Lastly, the anonymous commenter stated that the operation of the device depends on the user including power and electricity cost, and it is up to the individual, not the government, of what funds should be allocated in certain areas of the individual's choosing. (Anonymous, No. 19 at p. 1)

DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kWh per year, thereby establishing air cleaners as a type of consumer product that is a covered product under EPCA. 87 FR 42297. EPCA specifies that the Secretary may, in accordance with its provisions for amended and new test procedures, prescribe test procedures for any consumer product classified as a covered product under 42 U.S.C. 6292(b). (42 U.S.C. 6293(b)(1)(B)) As discussed in section I.A of this document, 42 U.S.C. 6293(b)(2) provides that if the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. DOE has fulfilled this requirement by publishing the October 2022 NOPR after receiving the Joint Proposal submitted by the Joint Stakeholders. Furthermore, the range of interested parties that submitted the Joint Proposal indicates widespread support for establishing a test procedure and standards for air cleaners. DOE is finalizing a test procedure for air cleaners in this document. Additionally, this test procedure will not impact the use, availability, manufacturing, or manufacturers of air cleaners because this rulemaking is not establishing any energy conservation standards. If DOE develops energy conservation standards for air cleaners, it would not require consumers to shut down the products they already own. Additionally, DOE will evaluate the impact of any potential standards on the use, availability, manufacturing, or manufacturers of air cleaners. DOE has analyzed the impact of this rulemaking on small businesses, as discussed in section IV.B of this document. Furthermore, while DOE is not specifying any regulation regarding individual use of funds, certain performance metrics in the air cleaners test procedure established by this final rule may assist consumers in their purchasing decisions.

The Joint Commenters stated that they are largely supportive of DOE's proposed test procedure and urged DOE to finalize the test procedure quickly. (Joint Commenters, No. 34 at p. 2) During the October 2022 webinar, ASAP stated that it appreciates that DOE has worked swiftly to publish this proposal, which is based on the recommendations presented by the Joint Stakeholders earlier this year. (ASAP, Public Meeting Transcript, No. 25 at p. 5)

The Joint Commenters also commented that the Joint Proposal was reviewed and supported by small and large manufacturers and achieved consensus by both types of manufacturers. (Joint Commenters, No. 34 at p. 7)

The Joint Commenters requested that DOE publish final rules adopting the air cleaner test procedure and standards before December 31, 2022, otherwise each of the Joint Stakeholders reserved the right to rescind support for the standards and compliance dates in the Joint Proposal. The Joint Commenters commented that the Joint Proposal urged DOE to rely upon the exception in section 8(d)(2)(ii) of the Process Rule to finalize the test procedure quickly and eliminate the time between finalizing the test procedure and the end of the comment period on a direct final rule on energy conservation standards for room air cleaners. (Joint Commenters No. 34, at pp. 1–2; AHAM, Public Meeting Transcript, No. 25 at p. 48)

The CA IOUs commended DOE for moving quickly on the rulemaking and aligning with the Joint Stakeholder recommendations submitted in August 2022, which included broad support for adopting AHAM AC–7–2022 as the test procedure for air cleaners and the IEF metric, expressed in terms of $PM_{2.5}$ CADR per watt (CADR/W), as the preferred performance metric. The CA IOUs expressed appreciation for the fact that DOE aligned with the Joint Stakeholder recommendation, and the CA IOUs requested that DOE show the same consideration by publishing an expeditious direct final rule based on these recommendations. (CA IOUs, No. 30 at pp. 1–2)

Daikin supported DOE's test procedure for conventional air cleaners due to a growing demand for these products. Daikin also supported DOE's efforts to quickly finalize this regulation to prevent additional U.S. states from implementing policies that may be different than the Federal policy. (Daikin, No. 35 at p. 1)

As discussed throughout this document, DOE has addressed feedback from the Joint Commenters and other stakeholders in finalizing the test procedure for air cleaners. Additionally, DOE has worked as expeditiously as feasible, within its obligations under EPCA, to finalize the test procedure for air cleaners. DOE is considering energy conservation standards in a rulemaking proceeding separate from this test procedure rulemaking.

B. Scope of Applicability

DOE defines air cleaner as a product for improving indoor air quality, other than a central air conditioner, room air conditioner, portable air conditioner, dehumidifier, or furnace, that is an electrically-powered, self-contained, mechanically encased assembly that contains means to remove, destroy, or deactivate particulates, VOCs, and/or microorganisms from the air. It excludes products that operate solely by means of ultraviolet light without a fan for air circulation. 10 CFR 430.2.

In the October 2022 NOPR, DOE proposed to establish test procedures for

a subset of products that meet the definition of ''air cleaner'' as established by the July 2022 Final Determination. Specifically, DOE proposed to define the scope of the proposed new test procedure as covering products defined as ''conventional room air cleaners'' in the AHAM AC–7–2022 Draft [11] standard. The proposed scope of the test procedure aligned with the available industry standard and encompasses a majority of the air cleaner market. 87 FR 63324, 63328. Further, this scope is consistent with the scope in the Joint Proposal. (Joint Proposal, No. 16 at p. 5) In the October 2022 NOPR, DOE additionally noted that DOE may consider test procedures for other types of air cleaners in a future rulemaking. 87 FR 63324, 63328.

Section 2.1.1 of AHAM AC–7–2022 defines a ''conventional room air cleaner'' as a consumer room air cleaner that is a portable or wall mounted (fixed) unit that plugs in to an electrical outlet; operates with a fan for air circulation; and contains means to remove, destroy, and/or deactivate particulates.

Sections 2.1.3.1 and 2.1.3.2 of AHAM AC–7–2022 further define ''portable'' and ''fixed,'' respectively, as follows:

Portable: can be easily moved from one place to another for use; and has no provision for permanent mounting. Tools are not required for the product installation or removal.

Fixed: permanently connected to the electrical supply source; permanently mounted, such that tools are required for the product installation or removal; or, sized so that it is not easily moved from one place to another.

In the October 2022 NOPR, DOE proposed to specify in section 1 of the proposed new appendix FF that the test procedure applies to ''conventional room air cleaners'' and to define that term in 10 CFR 430.2 through reference to section 2.1.1 of AHAM AC–7–2022 Draft. DOE further proposed to add references to sections 2.1.3.1 and 2.1.3.2 of AHAM AC–7–2022 Draft to the proposed definition of conventional room air cleaners to reference the definitions of portable and fixed conventional room air cleaners. 87 FR 63324, 63328.

In the October 2022 NOPR, DOE requested comment on its proposal to define the scope of the proposed new air cleaner test procedure as those air cleaners that meet the definition of a conventional room air cleaner as defined in section 2.1.1 of AHAM AC–7–2022 Draft. DOE also requested comment on its proposal to reference sections 2.1.1, 2.1.3.1, and 2.1.3.2 of AHAM AC–7–2022 Draft in 10 CFR 430.2 for the definitions of conventional room air cleaner, portable conventional room air cleaner, and fixed conventional room air cleaner, respectively. *Id.*

AHRI commented that it supports DOE's proposed definitions in AHAM AC–7–2022 for ''conventional room air cleaner,'' ''portable,'' and ''fixed'' with a CADR limit of 600 cubic feet per minute (cfm). (AHRI, No. 33 at p. 1) Daikin commented that it generally agreed with the scope and definitions used to describe the specific air cleaners in the scope of the proposed test procedure with a CADR limit of 600 cfm. (Daikin, No. 35 at p. 1)

Carrier stated its agreement with DOE's proposal to define the scope of the test procedure to conventional room air cleaners, but commented there could be confusion if DOE were to adopt section 2.1.1 of AHAM AC–7–2022 verbatim because it does not explicitly state whether ceiling mounted air cleaners are included. Carrier requested that ''ceiling mounted'' air cleaners be added to the section 2.1.1 definition of a ''conventional room air cleaner.'' (Carrier, No. 31 at p. 2)

During the NOPR public meeting, Acuity Brands asked whether a wall mounted product that is permanently connected to the electrical supply source and a ceiling mounted product would be included in the scope of the test procedure. (Acuity Brands, Public Meeting Transcript, No. 25 at p. 12)

During the NOPR public meeting, LifeAire asked if an in-duct system would be within the scope of the test procedure. (LifeAire, Public Meeting Transcript, No. 25 at p. 13)

DOE notes that wall mounted air cleaners are included, but ceiling mounted air cleaners are not included in the definition of conventional room air cleaner as defined in section 2.1.1 of AHAM AC–7–2022. DOE is not aware of any test method to test ceiling mounted air cleaners. DOE notes that section 3.1.5 of AHAM AC–1–2020 indicates that uniform testing practices and statistical examinations of air cleaners designed to be mounted on the ceiling have not been conducted. Given the potential confusion regarding whether ceiling mounted units are considered conventional room air cleaners and the lack of a test method for ceiling mounted units, DOE is excluding these air cleaners from the definition of conventional room air cleaners in this final rule. Additionally, in-duct air cleaners do not meet the definition of conventional room air cleaners and are not in the scope of the test procedure.

MIAQ stated its support for the proposed definition of a conventional air cleaner as it appears in section 2.1.1 of AHAM AC–7–2022. (MIAQ, No. 26 at p. 1) MIAQ and HVI both requested that ''incidental air cleaning products,'' be excluded from the proposed air cleaner test procedure and defined the term as a consumer product that would meet the definition of an air cleaner, but which provides an additional function, not related to air purification, within the same housing, such as a vacuum cleaner, fresh air ventilator, range hood (ducted or non-ducted), refrigerator, or desiccant dehumidifier, and whose air purification function is incidental to its other functions. (MIAQ, No. 26 at pp. 1–2; HVI, No. 32 at p. 1)

DOE notes that ''incidental air cleaning products'' do not meet the definition of an air cleaner as defined in 10 CFR 430.2. Specifically, as discussed in the July 2022 Final Determination, the definition of an air cleaner states, in part, that it is a product for improving indoor air quality, which excludes products that may provide some air cleaning as an ancillary function. 87 FR 42297, 42302. Given that the types of products described by MIAQ and HVI do not meet the definition of an air cleaner as specified in 10 CFR 430.2, DOE has determined that it is unnecessary to specify any additional exclusions in the air cleaners test procedure in the newly established appendix FF.

MIAQ requested clarification about whether DOE is referencing the definition of consumer room air cleaner in section 2.1 of AHAM AC–7–2022 Draft, thereby excluding ''duct type'' devices, ''lamps,'' and other devices as defined in 10 CFR 430.2. MIAQ stated that based on section 2.1.3.3 of AHAM–AC–7–2022 Draft, heat recovery ventilators (HRV), energy recovery ventilators (ERV), and supply fans would be excluded and that to avoid ambiguity, MIAQ proposed adding the words ''system in the room'' to the definition provided in section 2.1 of AHAM AC–7–2022 Draft to read as follows: ''Consumer room air cleaner means a consumer product for improving indoor air quality that: (1) Is an electrically-powered, self-contained system in the room, that has a

[11] At the time of publication of the October 2022 NOPR, AHAM AC–7–2022 was available as a Final Draft standard. As discussed in section III.C.1 of this document, the published AHAM AC–7–2022 is substantively the same as AHAM AC–7–2022 Draft referenced in the October 2022 NOPR, other than two minor edits to the instrumentation requirements. This document refers to AHAM AC–7–2022 Draft when referring to the October 2022 NOPR discussion and AHAM AC–7–2022 otherwise. AHAM AC–7–2022 Draft that was referenced in the October 2022 NOPR is available at: *www.aham.org/ItemDetail?iProductCode=30014&Category=PADSTD&websiteKey=69a0a5fb-295a-4894-acd0-5785f146b899.*

mechanically encased assembly.'' (MIAQ, No. 26 at p. 2) MIAQ also recommended adding reference to section 2.1 of AHAM AC–7–2022 Draft for the definition of consumer room air cleaner because it lists exclusions (*e.g.,* ''duct type,'' ''lamps,'' and the devices defined in 10 CFR 430.2) that are not explicitly listed in the sections referenced in this rulemaking. MIAQ further recommended referencing sections 2.1.3.4 and 2.1.3.5 of AHAM AC–7–2022 for definitions of combined product and lamps, respectively. (MIAQ, No. 26 at p. 4)

DOE clarifies that it is not referencing the definition of consumer room air cleaner as defined in section 2.1 of AHAM AC–7–2022. DOE already specifies a definition for air cleaner in 10 CFR 430.2, which is similar to the definition of consumer room air cleaner specified in AHAM AC–7–2022, but includes a broader scope. As such, for the scope of this test procedure rulemaking, the definition of conventional room air cleaner is adequate to define the products subject to this test procedure. Accordingly, in the October 2022 NOPR, DOE proposed to reference only section 2.1.1 of AHAM AC–7–2022 for the definition of conventional room air cleaner. However, because the definition of conventional room air cleaner in section 2.1.1 of AHAM AC–7–2022 includes the term ''consumer room air cleaner,'' which is defined in section 2.1 of AHAM AC–7–2022, DOE understands that this could cause confusion. Therefore, to avoid any such confusion, DOE is including the wording of the definition for conventional room air cleaner at 10 CFR 430.2 and removing the phrase ''consumer room air cleaner'' and replacing it with the term ''air cleaner,'' rather than referencing section 2.1.1 of AHAM AC–7–2022 within the definition. This definition at 10 CFR 430.2 is substantively the same as what DOE proposed in the October 2022 NOPR, along with the exclusion of ceiling mounted air cleaners as discussed previously. DOE is including the references to sections 2.1.3.1 and 2.1.3.2 of AHAM AC–7–2022 that were proposed in the October 2022 NOPR for the definitions of ''portable'' and ''fixed'' in the newly established appendix FF.

During the NOPR public meeting, Electrolux noted that the definition of conventional room air cleaner specifies the removal, destruction, or deactivation of particulates and it was not clear if an air cleaner that is removing smoke or gases would be included as part of this definition. (Electrolux, Public Meeting Transcript, No. 25 at p. 14) DOE notes that an air cleaner that can remove, destroy, or deactivate particulates, including smoke, would meet the definition of a conventional room air cleaner, if it meets the remaining criteria specified in the definition.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing its definitions of conventional room air cleaner, portable conventional room air cleaner, and fixed conventional room air cleaner.

Section 2 of AHAM AC–1–2020 indicates that due to the defined limits of measurability based on statistical accuracy, for a 95 percent confidence limit, the standard is applicable only to air cleaners with minimum CADR ratings as follows: 25 cfm for pollen CADR; 10 cfm for dust CADR; and 10 cfm for cigarette smoke CADR. Additionally, section 2 of AHAM AC–1–2020 indicates that the theoretical maximum limits for CADR are determined by the maximum number of initial available particles, the acceptable minimum number of available particles, an average background natural decay rate (from statistical study), the size of the test chamber, and the available minimum experiment time. Based on these parameters, section 2 of AHAM AC–1–2020 specifies the test procedure being applicable only to air cleaners with maximum CADR ratings of 600 cfm for dust and cigarette smoke and 450 cfm for pollen.

The recommended standards presented in the Joint Proposal are applicable to conventional room air cleaners with a minimum $PM_{2.5}$ CADR of 10 cfm. (Joint Proposal, No. 16 at p. 9)

As discussed, DOE's established scope for the test procedure pertains to conventional room air cleaners that are portable or wall mounted and plug into an electrical outlet. This is consistent with the scope of the AHAM AC–7–2022 and AHAM AC–1–2020 industry standards, which DOE is referencing for the CADR and power measurement tests, as discussed in later sections of this document. Given that DOE proposed to reference the AHAM industry standards for the DOE air cleaner test procedure, in the October 2022 NOPR, DOE requested comment on whether it should also specify the acceptable CADR range from AHAM AC–1–2020 as part of its test procedure scope. Specifically, DOE stated that it would consider specifying that the test procedure is applicable for conventional room air cleaners with smoke CADR or dust CADR between 10 to 600 cfm, inclusive. 87 FR 63324, 63328.

In the October 2022 NOPR, DOE requested comment on whether it should reference section 2 of AHAM AC–1–2020, which specifies that the standard is applicable for air cleaners only within rated CADR ranges of 10 to 600 cfm for dust and cigarette smoke. Additionally, DOE requested comment on whether this CADR range should be specified for $PM_{2.5}$ CADR instead of for dust CADR and smoke CADR. *Id.*

Carrier commented that DOE should specify that the test procedure scope include only CADR ranges of 10 to 600 cfm, and that larger air purifiers with a CADR greater than 600 cfm should be included only if and when AHAM AC–1–2020 is updated to be able to test such air cleaners. Carrier recommended that the CADR range should be specified for $PM_{2.5}$ CADR, since it is used for calculating the IEF in AHAM AC–7–2022. (Carrier, No. 31 at p. 2)

MIAQ supported DOE's proposal to reference section 2 of AHAM AC–1–2020 specifying that the standard applies to air cleaners only within rated CADR ranges of 10 to 600 cfm for dust and cigarette smoke. MIAQ additionally recommended keeping the dust CADR and smoke CADR range separate from $PM_{2.5}$ CADR since the dust CADR and smoke CADR are used in a geometric average, and in some cases, a product could have a $PM_{2.5}$ CADR rating within limits, while either smoke CADR or dust CADR could fall outside the limit. MIAQ commented that based on the hard limit for a theoretical maximum CADR rating based on the number of particles, background decay, size of the test chamber, and experiment run time, the CADR range of 10 to 600 cfm for dust and cigarette smoke should be enforced. (MIAQ, No. 26 at pp. 2–3)

MIAQ also commented that the pollen CADR limit should be listed, and that limits should be set similar to the theoretical maximum CADR values for smoke and dust. (MIAQ, No. 26 at p. 9)

AHRI commented that it recommends that DOE add a 600 cfm limit to $PM_{2.5}$ CADR in the regulatory language for the test procedure and consider covering larger air cleaners with future language. (AHRI, No. 33 at p. 1)

AHRI commented that it supports DOE's proposal to reference section 2 of AHAM AC–1–2020, specifying that the standard is applicable for air cleaners only within rated CADR ranges of 10 to 600 cfm for dust and cigarette smoke. AHRI stated that it agrees with DOE that this CADR range should be specified for $PM_{2.5}$ CADR, instead of for dust CADR and smoke CADR. (AHRI, No. 33 at p. 2)

Daikin commented that DOE must specify a CADR range that is verifiable and subject to regulation. Daikin commented that a minimum CADR limit

is not required in identifying DOE's coverage because every air cleaner below a CADR of 600 cfm should be included in the scope of regulation. Daikin additionally commented that based on the limitation of the AHAM standards, DOE should include a maximum CADR limit of 600 cfm. (Daikin, No. 35 at p. 2) Daikin also recommended that DOE develop a standard for large air cleaners (*i.e.,* with capacities greater than 600 cfm) prior to the next cycle of this regulation. (Daikin, No. 35 at p. 1)

During the NOPR public meeting, Daikin recommended that the test procedure scope should be clarified to include the CADR thresholds, which is prescribed based on the allowable limits of the test procedure and test room. (Daikin, Public Meeting Transcript, No. 25 at pp. 10–11 18) Daikin also asked if there was a way to accommodate air cleaners that have a CADR greater than 600 and suggested the CADR thresholds should be based on the $PM_{2.5}$ CADR metric. (Daikin, Public Meeting Transcript, No. 25 at pp. 16–17)

Carrier agreed with Daikin that there should be some way to accommodate larger-capacity air cleaners in the test procedure. (Carrier, Public Meeting Transcript, No. 25 at p. 17)

The CA IOUs commented that the CADR limitation of 10 to 600 cfm for both cigarette smoke and dust is due to limitations of the test chamber, particulate density, and other aspects of the test standard. While it is appropriate to reference this limitation in applicability to this test procedure, the CA IOUs disagree that a cfm limitation should apply to air cleaners as a whole. The CA IOUs stated they understood that AHAM and IEC discussed the challenges associated with testing units outside this scope and were working to resolve these concerns; therefore, the CA IOUs requested that DOE not delay the advancement of this proposed test procedure while test methods were developed and refined for very large-capacity units. (CA IOUs, No. 30 at p. 3)

The Joint Commenters stated that products that perform beyond the maximum CADR values need to be tested in a larger chamber for accurate assessment of their CADR. The Joint Commenters commented that the technical aspects for defining a repeatable and reproducible test method for a larger chamber are currently under evaluation in an AHAM task force and an IEC *ad hoc* working group, noting that once the issues are resolved there may be updates to AHAM AC–1. The Joint Commenters stated that they continue to support the 600 cfm limit for smoke CADR and dust CADR and do not currently recommend extending the test method to units with performance greater than 600 cfm for smoke CADR and dust CADR. The Joint Commenters clarified that their recommendations are restricted to consumer room air cleaners and noted that their comments specifically reference the current scope of AHAM AC–1–2020. (Joint Commenters, No. 34 at p. 7)

DOE appreciates the comments regarding the testing of air cleaners with a CADR greater than 600 cfm. However, given the theoretical limits of the test chamber specified for testing air cleaners, DOE has determined that it is appropriate to specify the minimum (10 cfm) and maximum (600 cfm) allowable CADR limits as part of the air cleaners test procedure scope in newly established appendix FF. The test chamber currently specified for testing cannot accommodate units with smoke CADR or dust CADR greater than 600 cfm; accordingly, units with either CADR greater than 600 cfm are not in the scope of this test procedure.

Additionally, because $PM_{2.5}$ CADR is a calculated value, determined as the geometric mean of smoke CADR and dust CADR, it would not be the appropriate metric for which to define scope limits within newly established appendix FF. A maximum CADR limit for a given particulate is dependent on the maximum number of initial available particles, the acceptable minimum number of available particles, an average background natural decay rate (from statistical study), the size of the test chamber, and the available minimum experiment time. Each of these factors is based on the particles that are used for a given test, which are either smoke or dust. Therefore, DOE concludes that the scope limits must be defined using smoke CADR and dust CADR, rather than $PM_{2.5}$ CADR. Specifically, DOE is specifying in section 1 of newly established appendix FF that the test procedure is applicable for conventional room air cleaners with smoke CADR and dust CADR between 10 to 600 cfm. DOE is also finalizing its determination that it is unnecessary to specify an allowable pollen CADR range in addition to the smoke or dust CADR range because pollen CADR is within the allowable range for dust and smoke.

C. Industry Standards Incorporated by Reference

1. AHAM AC–1–2020 and AHAM AC–7–2022

As discussed, AHAM published AHAM AC–1–2020 for measuring the performance of portable household electric room air cleaners. AHAM AC–1–2020 is a voluntary industry-developed test procedure that provides test methods to measure the relative reduction of smoke, dust, and pollen suspended in the air in a specified test chamber when an air cleaner is in operation. The test method is conducted by introducing a known initial concentration of a given particulate in the chamber, without the air cleaner in operation, to measure its natural decay. Next, the particulate is reintroduced in the chamber with the air cleaner in operation to measure the particulate decay with the air cleaner operating. The difference in the logarithmic rate of decay with the air cleaner in operation and without the air cleaner in operation, multiplied by the volume of the chamber, provides the CADR value of the test unit. AHAM AC–1–2020 additionally specifies methods to measure an air cleaner's active mode power consumption when conducting the pollen, smoke, or dust performance test in the test chamber, as well as methods to measure standby mode power consumption.

AHAM AC–1–2020 is currently referenced by the U.S. Environmental Protection Agency (EPA) in the ENERGY STAR Product Specification for Room Air Cleaners, Version 2.0, Rev. May 2022 (ENERGY STAR V. 2.0 Specification).[12] Further, the ENERGY STAR V. 2.0 Specification is referenced by air cleaner standards in Washington, DC and the States of New Jersey, Nevada, and Maryland.[13]

As discussed, since development of the October 2022 NOPR, AHAM's air cleaner task force has finalized a new test method, AHAM AC–7–2022, that specifies the test methods for measuring air cleaner efficiency. The power measurement test methods specified in AHAM AC–7–2022 use the existing power measurement test methods specified in AHAM AC–1–2020, updated to reflect current air cleaner technologies and functionalities. Additionally, AHAM AC–7–2022 specifies the methods to determine $PM_{2.5}$ CADR, which is calculated based on the geometric average of smoke CADR and dust CADR values; AEC; and IEF (expressed in CADR/W), which defines the efficacy (*i.e.,* energy

[12] Further information on the ENERGY STAR V. 2.0 Specification is available online at *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Version%20 20%20Room%20Air%20Cleaners% 20Specification%20%28Rev.%20May% 202022%29.pdf.*

[13] Further information on State air cleaner standards and timelines is available online from ASAP at *appliance-standards.org/product/air-purifiers.*

efficiency) of an air cleaner. DOE has participated in the meetings of the AHAM task force group responsible for developing AHAM AC–7–2022 and has provided input on several topics during its development. DOE also conducted testing according to AHAM AC–7–2022 and provided input to the AHAM task force based on its observations and experience during testing.

AHAM AC–7–2022 additionally references AHAM AC–1–2020 in several sections to specify requirements for the test chamber equipment and setup, as well as to conduct the in-chamber active mode power consumption test. All but one section refer to ''ANSI [14]/AHAM AC–1,'' ''AHAM AC–1,'' ''AC–1,'' or ''ANSI/AHAM AC–1–2020.'' DOE understands each of these references to be denoting the AHAM AC–1–2020 version of the standard, since it is included as a normative reference in AHAM AC–7–2022. In contrast, section 5.7.1 of AHAM AC–7–2022 references ''ANSI/AHAM AC–1–2022,'' specifically by stating that potassium chloride (KCl) is allowed as an alternate to cigarette smoke in ANSI/AHAM AC–1–2022. (*See* section III.G.1 of this final rule for DOE's consideration of the use of KCl as an alternative to cigarette smoke). DOE notes, however, that ANSI/AHAM AC–1–2022 is not published—DOE understands AHAM will be revising the standard in 2023—and the text of the AHAM AC–1–2022 standard was not available publicly for DOE to review at the time of the analysis for this final rule.

In the October 2022 NOPR, DOE proposed to incorporate by reference the then-latest draft of AHAM AC–7–2022 into 10 CFR 430.3 and to reference the relevant sections of this industry standard in the DOE test procedure at proposed new appendix FF. 87 FR 63324, 63329. DOE also proposed modifications to certain aspects of AHAM AC–7–2022 Draft, as discussed in the relevant sections of the October 2022 NOPR. (*Id.*)

Specifically, DOE proposed to reference AHAM AC–7–2022 Draft to specify the test methods for determining $PM_{2.5}$ CADR, AEC, and IEF. AHAM AC–7–2022 Draft specifies definitions, test conditions, and test methods for determining active mode power, standby mode power, out of chamber active mode power, and $PM_{2.5}$ CADR. DOE initially determined that the measurement of $PM_{2.5}$ CADR and power consumption as specified in AHAM–AC–7–2022 Draft would produce test results that measure the energy efficiency of an air cleaner during a representative average use cycle or period of use and would not be unduly burdensome to conduct. *Id.*

DOE additionally proposed to incorporate by reference AHAM AC–1–2020 to reference the test methods for determining pollen CADR, smoke CADR, and dust CADR and for each instance where AHAM AC–7–2022 Draft references AHAM AC–1–2020. *Id.* at 87 FR 63329–63330.

DOE additionally proposed to incorporate by reference IEC 62301 Ed. 2.0, which is referenced in AHAM AC–7–2022 Draft, for the instrumentation requirements and standby mode power measurement. *Id.* at 87 FR 63330.

DOE additionally proposed to incorporate by reference ASTM E741–11(2017), which is the current version of the standard referenced in section 3.3 of AHAM AC–7–2022 Draft, with regard to determining the test chamber air exchange rate. *Id.*

In the October 2022 NOPR, DOE stated its intention to update the reference to the final published version of AHAM AC–7–2022 in the test procedure final rule, should it publish prior to the final rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of AHAM AC–7–2022 Draft or provide additional opportunity for comment on the changes to the industry consensus test procedure. *Id.*

In the October 2022 NOPR, DOE stated that if AHAM AC–7–2022 referenced an updated version of AHAM AC–1–2020 and if the update version is both published and substantively the same as AHAM AC–1–2020, DOE would consider adopting the published version of AHAM AC–7–2022, including the reference to AHAM AC–1–2022. Additionally, DOE considered whether it should include reference to the use of KCl as an alternate to cigarette smoke, as currently specified in AHAM AC–7–2022 Draft. *Id.*

DOE requested comment on its proposal to adopt the substantive provisions of AHAM AC–7–2022 Draft with certain modifications. DOE requested comment on its proposal to incorporate by reference AHAM AC–1–2020, which is referenced in AHAM AC–7–2022 Draft, as well as to specify provisions related to the measurement of pollen CADR, smoke CADR, and dust CADR. *Id.*

DOE requested comment on its proposal to reference IEC 62301 Ed. 2.0, which is referenced in AHAM AC–7–2022 Draft for the instrumentation and testing provisions for measuring standby mode power consumption. DOE requested comment on its proposal to reference ASTM E741–11(2017), which is referenced in AHAM AC–7–2022 Draft for determining the test chamber air exchange rate. *Id.*

MIAQ commented in support of DOE's proposal to adopt the substantive provisions of AHAM AC–7–2022 Draft with certain modifications. MIAQ also commented in support of DOE's proposal to incorporate by reference AHAM AC–1–2020, which is referenced in AHAM AC–7–2022 Draft, as well as to specify provisions related to the measurement of pollen CADR, smoke CADR, and dust CADR. (MIAQ, No. 26 at p. 3)

Daikin supported DOE's decision to rely on ANSI standards developed by an accredited standards development organization and noted that the standards referenced by DOE in the October 2022 NOPR are developed by industry experts and stakeholders. Furthermore, Daikin stated that the AHAM AC–1–2020 standard is widely used by air cleaner manufacturers and adopted by EPA for its ENERGY STAR program. (Daikin, No. 35 at p. 2)

Carrier commented that it supports DOE's proposal in the October 2022 NOPR to align the air cleaners test procedure with industry standards. Carrier supported referencing AHAM AC–7–2022 Draft, IEC 62301 Ed. 2.0, and AHAM AC–1–2020, with some deviation. (Carrier, No. 31 at p. 1)

The Joint Commenters noted that their Joint Proposal urged DOE to adopt AHAM AC–7–2022 as the test procedure or to use it as the basis for the Federal test procedure. (Joint Commenters No. 34, at p. 2) The Joint Commenters stated that they believe AHAM AC–7–2022 satisfies EPCA's criteria in 42 U.S.C. 6293(b)(2) of being reasonably designed to produce test results that measure energy efficiency of air cleaners during a representative average use cycle and are not unduly burdensome to conduct. Therefore, the Joint Commenters stated their support for DOE's proposed test procedure, which is largely consistent with, although not identical to, AHAM AC–7–2022. (Joint Commenters, No. 34 at p. 2)

The Joint Commenters noted that DOE proposed to adopt the substantive provisions of AHAM AC–7–2022 in its final draft form with some modifications. The Joint Commenters commented that they support adoption of AHAM AC–7–2022, which had been published at the time of their comments, as the DOE test procedure, though they stated that minor differences exist in the instrumentation provisions compared to the version that DOE referenced in the October 2022 NOPR. The Joint Commenters commented that these

[14] American National Standards Institute (ANSI).

minor differences are known to other stakeholders and should not prevent DOE from adopting the final, published version of AHAM AC–7–2022. (Joint Commenters, No. 34 at p. 2)

The Joint Commenters stated that they support incorporating by reference AHAM AC–1–2020 because, though an updated version of AC–1 is in process, it will not be completed in time for DOE to meet the timelines in the Joint Proposal. (Joint Commenters, No. 34 at p. 2)

AHRI recommended that DOE implement AHAM AC–7–2022 Draft without modifications beyond the consideration of break-in conditions, as discussed in the relevant section. (AHRI, No. 33 at p. 2)

NEEA stated its support of DOE's proposed test procedure for air cleaners, which would adopt AHAM AC–7–2022. NEEA commented that AHAM AC–7–2022 includes significant improvements over the test method in ENERGY STAR V. 2.0, including introduction of a $PM_{2.5}$ CADR metric, which would allow testing of a wider range of product classes. NEEA commented that AHAM AC–7–2022 also specifies a method for calculating AEC, which includes assumptions regarding active operation and low power mode, detailing how to use AEC to calculate IEF. NEEA added that including low power mode represented an improvement over AHAM's previous test procedure. NEEA commented that improvements could be made as some elements of the AHAM test procedure were still in development, but stated such ongoing work should not delay adoption of DOE's proposed test procedure; NEEA cited the example of AHAM developing details for determining smoke CADR, such as the use of KCl to represent cigarette smoke, as one such issue that should not delay adoption. (NEEA, No. 28 at pp. 1–2)

AAFA commented that DOE should consider aspects of the AAFA/Allergy Standards Limited asthma & allergy friendly® Certification Program, designed to help people make better choices when buying products to remove allergens and improve indoor air quality. (AAFA, No. 29 at pp. 2–3)

DOE recognizes, as stated by the Joint Commenters, that AHAM AC–7–2022 specifies minor updates to the instrumentation provisions compared to the AHAM AC–7–2022 Draft that DOE referenced in the October 2022 NOPR. DOE discussed these updates to the instrumentation provisions in the NOPR public meeting and also discusses them in the relevant sections of this document. (Public Meeting Transcript, No. 25 at p. 26) As discussed elsewhere, the updates to the instrumentation provisions do not impact test results. Therefore, DOE is adopting AHAM AC–7–2022, with some modifications, in this final rule.

AAFA's certification program, which is also based on a modified version of the AHAM test standard, specifically focuses on particulates related to asthma and allergens. DOE has determined that the test procedure based on AC–7–2022, including the $PM_{2.5}$ CADR, measures the energy efficiency of air cleaners during a representative average use cycle and is not unduly burdensome to conduct. DOE recognizes the utility of air cleaners offering specific particulate removal capabilities and will consider such capabilities when determining appropriate energy conservation standards for air cleaners.

In conclusion, for the reasons discussed here and in the October 2022 NOPR, DOE is referencing AHAM AC–7–2022, AHAM AC–1–2020, IEC 62301 Ed. 2.0, and ASTM E741–11(2017) in this final rule, with certain modifications, as proposed in the October 2022 NOPR.

2. Other Industry Standards

In this final rule establishing an initial test procedure for measuring the energy efficiency of air cleaners, DOE is focusing on the functionality most broadly implemented in air cleaners on the market in the United States; *i.e.,* the removal of particulate matter through mechanical filtration means, which may include ionization particulate capture as well. Certain microorganisms, depending on their size, also may be removed from the air by such devices. In light of the ongoing COVID–19 pandemic and other health concerns, DOE recognizes the utility to consumers of additional means for reducing concentrations of microorganisms in the air, including destruction or deactivation of the microorganisms.

An example of a test method for air cleaners that reduce concentrations of airborne microorganisms is AHAM AC–5–2022, which AHAM published in March 2022. Under this test method, air cleaners are tested in a manner similar to AHAM AC–1–2020, except microorganisms, rather than particulates are aerosolized and introduced into the chamber. AHAM AC–5–2022 specifies different types of bacteria, bacteriophages, and mold spores that could be used for testing. Although DOE did not propose provisions in the October 2022 NOPR to measure the efficacy of an air cleaner's removal of microorganisms, DOE welcomed comment on the impact the type of microorganism selected for testing has on the CADR for microbes (m-CADR) value (*e.g.,* Phi-X 174 *vs.* MS2). 87 FR 63324, 63331. DOE also welcomed comment on whether measurements taken every two minutes for a duration of 10 minutes, as specified in section 7.3 of AHAM AC–5–2022, are sufficient to determine m-CADR. *Id.* DOE additionally requested comment on the duration for which a sample must be collected during each measurement point. *Id.* DOE also observed from test results that the natural decay curve for microorganisms could be increasing during the first 10–15 minutes and welcomed feedback on whether this is reasonable. *Id.*

The CA IOUs commented that DOE should continue outreach on other test standards (*e.g.,* AHAM AC–4 and AC–5), but not at the expense of completing this rulemaking within the timeframe recommended in the Joint Proposal. The CA IOUs expressed appreciation that DOE asked stakeholders for more information regarding microbiological (AHAM AC–5) and gaseous (AHAM AC–4) test standards, but the Joint Proposal did not propose a metric based on such testing and the CA IOUs believe it to be unnecessary at this time. (CA IOUs, No. 30 at p. 3)

AHRI advised DOE against referencing AHAM AC–5–2022 and stated that the appropriate test standards are already in use for determining m-CADR. (AHRI, No. 33 at p. 3)

The Joint Commenters stated that DOE should not at this time prescribe a test for gases or microorganisms because the Joint Commenters have not proposed standards based on them. The Joint Commenters commented that if DOE has specific questions about AHAM AC–5, it should request that the AHAM AC–5 task force reconvene to discuss technical matters. The Joint Commenters noted that AHAM AC–5–2022 was published in March 2022, meaning little test data is available. (Joint Commenters, No. 34 at p. 4)

MIAQ recommended that DOE focus on mechanical filtration of particulates as the basis of its energy regulations because including microorganisms and volatile organic compounds (VOCs) as part of CADR results would add undue testing and expense to the manufacturer for products that may not include any means for reducing these constituents (*i.e.,* carbon filter for VOCs). MIAQ commented that specific constituents should be considered outside the scope of this testing and that introducing any regulations or requirements for microorganism reduction may add additional EPA regulation work and documentation and could classify the

product as a pesticidal device. MIAQ added that AHAM AC–4 and AHAM AC–5 could be used as a basis for the evaluation of CADR ratings for these specific use cases, but AHAM AC–4 and AHAM AC–5 should be considered supplemental rather than required as part of this regulation. (MIAQ, No. 26, at pp. 3–4)

AHRI commented that stakeholders have not been provided sufficient information to provide substantive data on the need for testing with more than one microorganism. AHRI requested that DOE provide additional clarification on the purpose of this proposal and data to support their investigation. AHRI commented that the addition of new microorganisms is likely to affect CADR ratings and, as a proposed regulated metric, this effect should be carefully considered. AHRI commented that if DOE is unable to provide data to support this proposal, any further recommendations should be reviewed by the consensus body developing AHAM AC–5–2022. (AHRI, No. 33 at p. 3)

Daikin commented in support of further investigation and clarity on using the AHAM AC–5–2022 standard in relation to this regulation, as it believes that different types of microorganisms are expected to affect CADR ratings, and stated that it did not have any recommended action. Daikin further commented that if DOE intended to stem the misuse of incorrect efficacy claims related to certain infectious pathogens based on different laboratory pathogens, then Daikin would support further investigation and clarity. (Daikin, No. 35 at p. 2)

DOE is still evaluating the repeatability, reproducibility, and representativeness of AHAM AC–4–2022 and AHAM AC–5–2022. Accordingly, and consistent with stakeholder comments, DOE is not prescribing a test method for testing gaseous contaminants or microorganisms at this time.

D. Definitions

As discussed, DOE specifies a definition for air cleaners at 10 CFR 430.2. Additionally, as discussed in section III.B of this document, DOE is referencing, but not incorporating by reference, section 2.1.1 of AHAM AC–7–2022 in 10 CFR 430.2 to specify the definition for ''conventional room air cleaner'' and reference within this definition sections 2.1.3.1 and 2.1.3.2 of AHAM AC–7–2022 to define ''portable air cleaner'' and ''fixed air cleaner,'' respectively. These definitions are relevant to establish the scope of the new appendix FF.

In addition to these definitions, in the October 2022 NOPR, DOE proposed to specify certain additional definitions in the proposed new appendix FF that would be required to test air cleaners according to the new test procedure. 87 FR 63324, 63332.

DOE proposed to reference sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.8 [15] of AHAM AC–7–2022 Draft to specify definitions for the following terms in section 2 of the proposed new appendix FF. *Id.*

- Function means a predetermined operation undertaken by the air cleaner. Functions may be controlled by an interaction of the user, of other technical systems, of the system itself, from measurable inputs from the environment and/or time. In AHAM AC–7–2022, functions are grouped into four main types: primary functions, secondary functions, user oriented secondary functions, and network related secondary functions.
- Primary function means an air cleaning function that reduces the concentration of one or more types of indoor air pollutants.
- Secondary function means a function that enables, supplements, or enhances a primary function. For air cleaners, secondary functions are other functions which are not directly related to air cleaning. Examples may include a vacuum, heating, humidification, or additional ambient room lights (*e.g.,* night light).
- User oriented and network function (*i.e.,* control functions) may include network connection, Wi-Fi, clocks, radio, remote controls, or other programmable functions that may continue to be enabled when the primary function is inactive.
- Mode means a state that has no function, one function, or a combination of functions present.
- Active mode means a product mode where the energy using product is connected to a mains power source and at least one primary function is activated.
- Low power mode as per IEC 62301 Ed. 2.0 means a product mode that falls into one of the following broad mode categories: off mode(s), standby mode(s), network mode(s), inactive mode.
- Standby mode means a mode offering one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. *Informative Note: A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (e.g., switching) and that operates on a continuous basis.* (b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.
- Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control) or internal sensor, or which provides continuous status display.
- Off mode means a mode in which a consumer room air cleaner is not providing any active or standby mode function and where the mode may persist for an indefinite time, including an indicator that only shows the user that the product is in the off position.
- Network mode means any product modes where at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active.
- Clean Air Delivery Rate (CADR) is the measure of the delivery of contaminant free air, within a defined particle size range, by an air cleaner, expressed in cubic feet per minute (cfm). CADR is the rate of contaminant reduction in the test chamber when the air cleaner is turned on, minus the rate of natural decay when the air cleaner is not running, multiplied by the volume of the test chamber as measured in cubic feet. Note: CADR values are always the measurement of an air cleaner performance as a complete system and have no linear relationship to the air movement *per se* or to the characteristics of any particle removal methodology.
- Integrated energy factor (IEF) is the energy the air cleaner uses when it is in standby mode, as well as its active mode energy. This is fully defined as the measured $PM_{2.5}$ CADR per watt.
- $PM_{2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (μm) as measured by a reference method based on 40 CFR part 50 Annex I and designated in accordance with 40 CFR part 53 or by an equivalent method designated in accordance with 40 CFR part 53.

[15] DOE notes in the preamble of the October 2022 NOPR it stated that it proposed to reference sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.8 of AHAM AC–7–2022 Draft, but the definitions it proposed to reference from the AHAM standard are listed in sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.9. 87 FR 63324, 63332. Additionally, the proposed CFR language contained the reference to definitions from section 2.9 of AHAM AC–7–2022 Draft. Id. at 63352.

• $PM_{2.5}$ CADR is from ANSI/AHAM AC–1–2020; Annex I. The performance on $PM_{2.5}$ of an air cleaner is represented by a clean air delivery rate (CADR) based on the dust and cigarette smoke performance data. The diversity of particle natures and the sizes of the dust and smoke pollutants gives a well-balanced representation of the ultra-fine and fine particulate matters that define $PM_{2.5}$. $PM_{2.5}$ CADR is obtained by combining the CADR of cigarette smoke particle sizes ranging from 0.1 to 0.5 μm with the CADR of dust particles that fall in the range of 0.5 to 2.5 μm and performing a geometric average calculation.

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 0.5\ \mu m) \times Dust\ CADR\ (0.5 - 2.5\ \mu m)}$$

AHAM AC–7–2022 Draft also includes definitions for other terms that DOE did not propose to incorporate into the proposed new appendix FF. Generally, these other terms are inconsistent with or not relevant to the scope of the DOE test procedure. *Id.*

DOE requested comment on its proposal to include definitions for the aforementioned terms, via reference to AHAM AC–7–2022 Draft. *Id.* at 87 FR 63333.

Carrier expressed support for DOE's proposal to reference sections 2.2 and 2.3, sections 2.4.1 through 2.4.2.4, and sections 2.6 through 2.8 of AHAM AC–7–2022 Draft for the defined terms in the proposed new appendix FF, with the only additional recommendation to include ''ceiling mounted'' in the definition for a ''conventional room air cleaner.'' (Carrier, No. 31 at p. 3) For the reasons discussed in section III.B of this document, DOE is not including ''ceiling mounted'' in the definition of conventional room air cleaners.

AHRI commented that, if no substantive changes are made to the definitions between the draft and final standard, AHRI supports DOE's proposal to reference the definitions from AHAM AC–7–2022 in the new appendix FF. (AHRI, No. 33 at p. 4) DOE notes no changes were made to the definitions in section 2 between the AHAM AC–7–2022 Draft and the published AHAM AC–7–2022.

DOE notes in the preamble of the October 2022 NOPR it stated that it proposed to reference sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.8 of AHAM AC–7–2022 Draft, but the definitions it proposed to reference from the AHAM standard are listed in sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.9, which is the definition for $PM_{2.5}$ CADR. 87 FR 63324, 63332. Additionally, the proposed CFR language contained the reference to definitions from section 2.9 of AHAM AC–7–2022 Draft. *Id.* at 63352. Given that the preamble language included the definition and the proposed CFR language contained the reference to section 2.9 of AHAM AC–7–2022 Draft, DOE is finalizing its inclusion in newly established appendix FF of the definitions for the aforementioned terms via reference to sections 2.2, 2.3, 2.4.1 through 2.4.2.4, and 2.6 through 2.9 of AHAM AC–7–2022.

E. Test Conditions

Section 3 of AHAM AC–7–2022 specifies test conditions for the measurement of active mode and standby mode power consumption and includes references to certain sections of AHAM AC–1–2020 as appropriate. Specifically, sections 3.1 through 3.6 of AHAM AC–7–2022 specify requirements for active mode and standby mode electrical supply, test chamber ambient temperature, test chamber air exchange rate, test chamber particulate matter concentrations, chamber equipment, and test unit preparation (including conditioning of the air cleaner prior to testing, placement of the air cleaner for testing, and network connection setup requirements), respectively.

DOE proposed in the October 2022 NOPR to reference the test condition requirements specified in sections 3.1 through 3.6 of AHAM AC–7–2022 in the proposed new appendix FF. 87 FR 63324, 63333. The following sections summarize each of the requirements specified in AHAM AC–7–2022 along with any stakeholder comments received in response to this proposal.

1. Electrical Supply

Section 3.1 of AHAM AC–7–2022 specifies the electrical supply requirements for active mode and standby mode testing. These requirements specify that active mode power supply test voltage and frequency must be set to the nameplate voltage ±1 percent. If a range of voltage is provided on the nameplate, then the voltage for the country for which the measurement is being determined shall be used per Table 1 of AHAM AC–7–2022 (±1 percent). Table 1 specifies 120 volts and 60 hertz for units in North America. For standby mode testing, the power supply test voltage and frequency are to be set as noted in Table 1 of AHAM AC–7–2022 (±1 percent), which specifies 115 volts and 60 hertz for units in North America. DOE notes that these power supply requirements are generally consistent with DOE test procedures for other consumer products for which standby mode and active mode are tested. Accordingly, in the October 2022 NOPR, DOE proposed to reference section 3.1 of AHAM AC–7–2022 Draft for the electrical supply requirements in the proposed new appendix FF. 87 FR 63324, 63333.

DOE requested comment on its proposal to reference section 3.1 of AHAM AC–7–2022 Draft for the electrical supply requirements for active mode and standby mode power measurement in proposed new appendix FF. *Id.*

MIAQ recommended aligning the supply voltage for active mode and standby mode, as lower supply voltage may cause lower efficiency of switch-mode power supplies. MIAQ added that when measuring standby or low power modes, such a minor efficiency change may be more significant as the power limit thresholds continue to be lowered. (MIAQ, No. 26 at p. 5)

AHRI commented that it supports DOE's proposal to reference section 3.1 of AHAM AC–7–2022 Draft for the electrical supply requirements for active and standby mode power measurement. (AHRI, No. 33 at p. 4)

Regarding the supply voltages specified for active mode and standby mode testing, the proposed voltage specifications are consistent with the respective industry standards that DOE proposed to incorporate by reference (and that are being incorporated by reference in this final rule). That is, section 3.1 of AHAM AC–7–2022 specifies that the active mode power supply test voltage must be the nameplate voltage (±1 percent) or, if a range of voltages are provided on the nameplate, 120 volts (±1 percent). Section 3.1 of AHAM AC–7–2022 additionally requires 115 volts (±1 percent) for the standby mode power supply test voltage. DOE notes that this requirement is also consistent with the test method specified in ENERGY STAR V. 2.0. DOE is adopting these voltage requirements in this final rule given the potential near-term compliance timeline recommended in the Joint Proposal and the consequent burden that would be

associated with re-testing all units that are currently certified to ENERGY STAR V. 2.0 within a short period of time if DOE were to require the same voltage requirements for both active and standby mode in appendix FF. Additionally, as discussed, EPCA requires DOE to consider the most current version of IEC 62301 in prescribing or amending test procedures that integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor. (42 U.S.C. 6295(gg)(2)(A)) Section 4.3.1 of IEC 62301 Ed. 2.0 specifies a test voltage of 115 volts (±1 percent) for standby mode power consumption testing in North America in the instance where the test voltage is not otherwise specified in an external standard, with no consideration of the nameplate voltage included. By incorporating by reference in the newly established appendix FF the standby mode supply power test voltage requirements from AHAM AC–7–2022, which are consistent with those in IEC 62301 Ed. 2.0, DOE is in part satisfying EPCA's requirement that the test procedure account for standby mode and off mode energy consumption.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the electrical supply specifications for the newly established appendix FF, as proposed in the October 2022 NOPR.

2. Ambient Conditions

Section 3.2 of AHAM AC–7–2022 specifies the test chamber ambient temperature requirements for active mode and standby mode tests. The active mode ambient temperature requirement is 70 ± 5 degrees Fahrenheit (°F) (21 ± 3 degrees Celsius (°C)) with a relative humidity of 40 ± 5 percent. The standby mode ambient temperature requirement is 70 ± 9 °F (21 ± 5 °C), with no relative humidity requirement specified. DOE notes that the active mode test requirements are similar to the ambient conditions specified for certain other consumer products that affect room air besides heating or cooling (*e.g.,* DOE's ceiling fan test procedure specifies maintaining the room temperature at 70 ± 5 °F and the room relative humidity at 50 ± 5 percent during testing),[16] and as such, DOE expects that these conditions would also produce representative test results for air cleaners. Additionally, section 5.7.2 of AHAM AC–7–2022, which specifies the supplemental test to measure active mode power consumption outside a test chamber, also references section 3.2 of AHAM AC–7–2022 to specify that the same ambient conditions must be maintained when testing outside the chamber.

DOE recognizes that standby mode testing is likely to be much less sensitive to ambient room temperature or humidity compared to active mode testing, such that the wider tolerance on ambient temperature and the lack of a humidity requirement for standby mode testing are appropriate. DOE understands that test laboratories already have the expertise and equipment necessary to maintain these specified ambient temperature and relative humidity test conditions—within the specified tolerances—when testing air cleaners within the test chamber, as well as the expertise and equipment necessary for maintaining temperature within the specified tolerance for standby mode. In the October 2022 NOPR, DOE proposed to reference these ambient temperature and relative humidity requirements from AHAM AC–7–2022 Draft in the proposed new appendix FF. 87 FR 63324, 63333.

DOE requested comment on its proposal to reference section 3.2 of AHAM AC–7–2022 Draft for the ambient temperature and humidity requirements for active mode and standby mode power measurement. *Id.*

MIAQ recommended aligning the ambient temperature for both active mode and standby mode. (MIAQ, No. 26 at p. 5)

As discussed in the October 2022 NOPR, DOE recognizes standby mode testing to be much less sensitive to ambient room temperature or humidity compared to active mode testing of air cleaners. Additionally, the wider tolerance for the ambient conditions for standby mode testing would allow such testing to be conducted outside the specialized active mode test chamber, which would significantly reduce test burden by allowing greater testing throughput in the specialized active mode test chamber.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the ambient test condition specifications in new appendix FF, as proposed in the October 2022 NOPR.

3. Test Chamber Air Exchange Rate

Section 3.3 of AHAM AC–7–2022 requires that, per section 4.3 of AHAM AC–1–2020, the test chamber air exchange rate must be less than 0.03 air changes per hour as determined by ASTM E741 or an equivalent method. DOE does not have information on typical air changes within a representative room, but this condition is necessary to ensure consistent test chamber conditions by minimizing the air exchange rate, and DOE has tentatively determined that the industry-accepted specification for the air exchange rate, as reviewed by the AHAM task force, would be appropriate for air cleaner testing. Accordingly, in the October 2022 NOPR, DOE proposed to additionally reference section 4.3 of AHAM AC–1–2020 within the proposed provisions of section 3 of the proposed new appendix FF. 87 FR 63324, 63333. As discussed, DOE also proposed to incorporate by reference ASTM E741–11(2017), the most recent version of that industry standard. *Id.*

DOE requested comment on its proposal to reference section 3.3 of AHAM AC–7–2022 Draft for the test chamber air exchange rate requirements, including its reference to ASTM E741–11(2017), in the proposed new appendix FF. *Id.*

AHRI stated its support for DOE's proposal to reference ASTM E741–11(2017), referenced in AHAM AC–7–2022 Draft. AHRI commented that the test chamber air exchange rate per AHAM AC–1–2020 should be less than 0.03 air changes per hour (ACH) as determined by ASTM E741–11(2017). (AHRI, No. 33 at p. 3)

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the test chamber air exchange rate requirements, as proposed in the October 2022 NOPR, in the new appendix FF.

4. Test Chamber Particulate Matter Concentrations

Section 3.4 of AHAM AC–7–2022 specifies the acceptable range of particle concentrations for the initial test condition for the smoke and dust tests, via reference to AHAM AC–1–2020. The acceptable ranges in section 3.4 of AHAM AC–7–2022 correspond with the ranges provided in section 4.4 of AHAM AC–1–2020. DOE recognizes that initial particle concentration is a necessary requirement for repeatability and reproducibility by ensuring consistent test chamber conditions prior to measuring decay rate, and in the October 2022 NOPR, DOE tentatively determined that the industry-accepted specification for the initial particle concentrations, as reviewed by the AHAM task force, would be appropriate for air cleaner testing. 87 FR 63324, 63333–63334. Accordingly, DOE proposed to reference section 3.4 of AHAM AC–7–2022 Draft and additionally reference section 4.4 of

[16] *See* section 3.3.1(1) of 10 CFR, part 430, subpart B, appendix U, ''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans.''

AHAM AC–1–2020 within the proposed provisions of section 3 of the new appendix FF. *Id.* at 87 FR 63334.

DOE requested comment on its proposal to reference section 3.4 of AHAM AC–7–2022 Draft for the initial particulate concentrations in the test chamber. *Id.*

DOE did not receive any comments on this topic. For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the provisions specifying the initial particulate concentrations in the test chamber, as proposed in the October 2022 NOPR, for the new appendix FF.

5. Test Chamber Construction and Equipment

Section 3.5 of AHAM AC–7–2022 references Annex A of AHAM AC–1–2020 to specify the test chamber construction and equipment positioning during testing. Annex A of AHAM AC–1–2020 provides requirements for chamber size, framework, constructions and material for the walls and flooring, as well as additional equipment that must be used in the chamber for conducting tests. DOE believes these requirements are relevant to ensure that testing is conducted in a representative chamber and that it is repeatable and reproducible.

In the October 2022 NOPR, DOE proposed to reference in the proposed new appendix FF section 3.5 of AHAM AC–7–2022 Draft, which references Annex A of AHAM AC–1–2020 for the details of the test chamber construction and equipment. 87 FR 63324, 63334. DOE requested comment on its proposal to reference section 3.5 of AHAM AC–7–2022 Draft, which references Annex A of AHAM AC–1–2020 to specify the test chamber construction and equipment requirements. *Id.*

DOE did not receive any comments on this topic. For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the test chamber construction and equipment specifications in the new appendix FF, as proposed in the October 2022 NOPR.

6. Test Unit Preparation

Section 3.6 of AHAM AC–7–2022 specifies three requirements regarding test unit preparation: conditioning of the air cleaner prior to measurement in section 3.6.1; test unit placement for testing in section 3.6.2; and network connectivity requirements in section 3.6.3.

For the conditioning requirements, section 3.6.1 of AHAM AC–7–2022 specifies that air cleaners must be operated for 48 hours in maximum performance mode to break in the motor prior to conducting any active mode tests. It further specifies that this break-in must be conducted with replacement filters and that after the break-in period is completed, all original and as-received filters must be reinstalled, and non-replaceable components should be cleaned according to manufacturers' instructions prior to performing the active mode test. Additionally, section 3.6.1 of AHAM AC–7–2022 specifies that installation of a UV device that is energized during air cleaning function and lamp assembly within the air cleaner shall be according to manufacturer's instructions and the burn-in time for the UV lamp shall also be 48 hours, run concurrently with the break-in period of the motor.

In the October 2022 NOPR, DOE requested comment on its proposal to reference section 3.6.1 of AHAM AC–7–2022 Draft for the air cleaner conditioning requirements in the proposed new appendix FF. 87 FR 63324, 63334.

DOE also requested comment on whether the 48-hour burn-in time for air cleaners with UV lights is sufficient or if the burn-in time duration should be increased. *Id.*

AHRI commented that it supports DOE's proposal to reference section 3.6.1 of AHAM AC–7–2022 Draft for the air cleaner conditioning requirements. AHRI commented that it is imperative to specify and standardize conditions for break-in because they may affect ratings. AHRI recommended including in the testing conditions maintaining a relative humidity below 60 percent in noncondensing conditions, maintaining temperatures above 32 °F and below 80 °F, and maintaining a testing environment that is free of contaminants, particulate matter, and chemicals. (AHRI, No. 33 at p. 4)

Daikin commented it agrees to include section 3.6.1 of AHAM AC–7–2022, but that section 3.6.1 of AHAM AC–7–2022 is lacking crucial details about the break-in procedure. Daikin stated that the standard specifies a break-in duration, but it does not specify where to run the unit during the break-in period. Daikin commented that it does not expect a laboratory to use the test chamber for the break-in procedure. Consequently, if the laboratory places a test unit outside the chamber, Daikin stated that the unit should be placed in a location with acceptable air quality and absent particulate matter and chemicals (*e.g.,* isopropyl alcohol (IPA)) that may affect test repeatability. Daikin commented that unless DOE can prove that the break-in location has no impact on the measured performance ratings, it is good practice to standardize break-in conditions and avoid unnecessary confounding factors where feasible. Daikin recommended the following broad ambient conditions during break-in to ensure repeatability: room temperature to be between 32 °F and 80 °F and relative humidity to be less than 60-percent, non-condensing conditions, and the break-in room to be a clean, ventilated space, absent of chemicals and particulate matter that may be found in a test laboratory conducting air quality tests. Daikin recommended that DOE provide more detailed and repeatable break-in room requirements for future versions of the standard. (Daikin, No. 35 at pp. 2–3)

DOE notes that the ambient conditions suggested by AHRI would require the use of a test chamber for the duration of the break-in period, which is 48 hours. This would significantly increase burden compared to using the test chamber only for the active mode measurement, as proposed. Regarding Daikin's recommended ambient conditions for conditioning the air cleaner, DOE appreciates the comment and will continue to investigate these issues as part of the AHAM task force. At this time, the proposed use of a replacement filter during the break-in period is intended to prevent changes in ratings caused by using a pre-used filter during the active mode portion of the test. DOE also does not have any information to suggest that it is necessary to have the same ambient conditions during break-in as during the active mode test, and therefore is not adopting condition requirements for the break-in period.

MIAQ stated its support for a 48-hour burn-in time for air cleaners with UV light-emitting diode (LED) lights. (MIAQ, No. 26 at p. 5)

The Joint Commenters commented that they believe a 48-hour burn-in time for air cleaners with UV lights is sufficient because the lamps are not being used for smoke or dust removal and the 48-hour burn-in time does not add additional burden to the test setup. (Joint Commenters, No. 34 at p. 5)

AHRI commented that because lamps are not used for smoke and dust removal, the 48-hour burn-in time is equivalent to the other components and does not create additional test burden. AHRI recommended following manufacturers' instructions for burn-in time and commented that unless otherwise stated by a manufacturer, the 48-hour burn-in time for air cleaners is appropriate. (AHRI, No. 33 at p. 4)

Consistent with the comments summarized in the preceding paragraphs, DOE agrees that a 48-hour burn in time for units with UV lamps,

as specified in section 3.6.1 of AHAM AC–7–2022, is suitable to ensure a representative and repeatable test condition without being unduly burdensome because UV lamps are not used for smoke and dust removal and this burn in time is consistent with the break-in period required for air cleaners generally.

Carrier commented that in terms of burn-in time for air cleaners with UV lights, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 185.1 [17] and the National Electrical Manufacturers Association (NEMA) require a 100-hour burn-in requirement for testing UV lights and that, as a result, Carrier suggested that DOE adopt a 100-hour burn-in, instead of the 48 hours defined in section 3.6.1 of AHAM AC–7–2022 Draft. (Carrier, No. 31 at p. 3)

DOE notes that the ASHRAE test standard listed by Carrier is specifically intended to evaluate UV–C lamps to inactivate airborne microorganisms; whereas, the DOE test procedure is not introducing microorganisms in the test chamber, and UV–C lamps without a fan for air circulation do not meet the definition of an air cleaner and therefore are not within the established scope of this the procedure. Additionally, a 100-hour UV burn-in period would significantly increase burden, and Carrier did not provide any data or information to suggest what additional benefit would be gained over the proposed 48-hour burn-in period.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the air cleaner conditioning requirements, as proposed in the October 2022 NOPR, in the new appendix FF.

7. Test Unit Placement for Testing

Section 3.6.2 of AHAM AC–7–2022 specifies that the air cleaner must be placed in the test chamber in accordance with section 4.6 of AHAM AC–1–2020, which states that the air cleaner must be installed per manufacturer's instructions in the center of the test chamber, facing the test window, positioned with its air discharge as close as possible to the test chamber center. Section 4.6 of AHAM AC–1–2020 further requires that if the manufacturer's instructions ''do not specify'' [18] and the air cleaner is not a floor model, the air cleaner must be placed on the table for testing. AHAM AC–1–2020 does not provide further specificity as to how to determine if an air cleaner is a floor model, which may potentially cause ambiguity in determining whether a particular air cleaner would need to be placed on the table. DOE notes that section 5.7 of IEC 63086–1 [19] requires that if placement of an air cleaner is not specified by the manufacturer and the air cleaner's height is less than 0.7 meters from the floor, the unit shall be placed on a table of 0.7 meters in height. In all other instances, IEC 63086–1 specifies that the air cleaner shall be placed on the floor of the test chamber.

In the October 2022 NOPR, DOE proposed to reference section 3.6.2 of AHAM AC–7–2022 Draft in the proposed new appendix FF. 87 FR 63324, 63334. DOE also considered including the additional test unit placement requirement from IEC 63086–1. *Id.* at 87 FR 63334–63335. By referencing a measurable metric (unit height) to determine the installation configuration of the air cleaner in the absence of manufacturer's instructions, DOE stated that IEC 63086–1 may provide greater certainty regarding how to test certain air cleaner models, which could contribute to a more reproducible and representative test measurement. *Id.* In the October 2022 NOPR, DOE considered specifying the height limit for placement on the table in the test chamber as 28 inches, given that 0.7 meters is approximately 27.6 inches. *Id.* Additionally, DOE considered whether it should include any requirement for air cleaners shipped with casters; specifically, whether such air cleaners should be tested on the floor regardless of the unit's height. *Id.*

In the October 2022 NOPR, DOE requested comment on its proposal to reference section 3.6.2 of AHAM AC–7–2022 Draft, which references section 4.6 of AHAM AC–1–2020 for the test unit placement instructions, in the proposed new appendix FF. *Id.*

DOE also requested comment on whether it should consider including the requirement from IEC 63086–1 that specifies that if the placement of the air cleaner is not specified by the manufacturer and the air cleaner's height is less than 28 inches, then the unit must be tested on the table. Specifically, DOE requested comment on whether the language in AHAM AC–7–2022 Draft stating that ''if the air cleaner is not a floor model'' is clear to follow, without any ambiguity, or whether a quantitative metric such as unit height would be better to ensure consistent test setup. *Id.*

DOE also requested comment on whether it should include any placement instructions for air cleaners shipped with casters. *Id.*

Carrier commented that in cases where the manufacturer does not specify placement and fails to designate the unit as a floor model, DOE should include the requirement from IEC 63086–1 specifying that if the placement of the air cleaner is not specified by the manufacturer and the air cleaner's height is less than 28 inches, then the unit must be tested on the table. (Carrier, No. 31 at p. 4)

MIAQ recommended following the manufacturer's instructions; for example, if the air cleaner is called a ''floor model,'' it should be tested on the floor, however if it lacks the specification as a ''floor model,'' it should be tested on the table. MIAQ also commented that if an air cleaner included casters for portability, then the unit should be tested on the floor, unless otherwise specified in the manufacturer's instructions. (MIAQ, No. 26 at p. 6)

AHRI commented that AHAM has published an interpretation of AC–1–2020 (October 3, 2022) [20] that specifies test unit placement instructions and recommended that DOE reference this publication. (AHRI, No. 33 at p. 4)

The Joint Commenters stated that AHAM addressed several of DOE's requests for comments on unit placement and section 4.6 of AHAM AC–1–2020 by adding an interpretation to AHAM AC–1–2022 on October 3, 2022. The Joint Commenters commented that questions addressed include (1) whether to include additional test unit placement requirements, (2) whether to include a requirement for air cleaners shipped with casters, and (3) whether to specify placement of the air cleaner if placement is not specified by the manufacturer and the air cleaner's height is less than 28 inches. The Joint Commenters stated that a published copy of AHAM–AC–1–2020 with interpretation was provided to DOE on November 14, 2022. The Joint Commenters commented that they urge DOE to adopt the interpretation as part

[17] Standard 185.1–2020—Method of Testing UV–C Lights for Use in Air-Handling Units or Air Ducts to Inactivate Airborne Microorganisms (ANSI Approved). Available at: *https://www.techstreet.com/standards/ashrae-185-1-2020?product_id=2185612.*

[18] DOE understands the language ''If manufacturer's instructions do not specify'' to mean that the manufacturer's instructions do not clearly indicate the placement of the air cleaner on a floor, table, or another flat surface.

[19] IEC 63086–1:2020, ''Household and similar electrical air cleaning appliances—Methods for measuring the performance—Part 1: General requirements.''

[20] See AHAM's comment during the public meeting. (AHAM, Public Meeting Transcript, No. 25 at p. 24)

of its incorporation by reference. (Joint Commenters, No. 34 at p. 5)

As noted by the Joint Commenters, AHAM has added an interpretation to the AHAM AC–1–2020 standard that includes the unit placement specifications from IEC 63086–1, which provides greater clarity on the air cleaner placement when no manufacturer instructions are specified. The AHAM AC–1–2020 interpretation also notes that units with casters should be interpreted as floor models even when manufacturer instructions do not specify placement instructions.

DOE has determined that the updated AHAM–AC–1–2020 standard with the included interpretation that specifies the unit placement specifications from IEC 63086–1 is consistent with and adequately addresses the unit placement concerns discussed in the October 2022 NOPR. Accordingly, DOE is maintaining its reference to section 3.6.2 of AHAM AC–7–2022 for unit placement in the new appendix FF, but section 3.6.2 of AHAM AC–7–2022 references AHAM AC–1–2020, which includes the additional AHAM Standard Interpretation that specifies the same requirements as those specified in IEC 63086–1 and discussed in the October 2022 NOPR. For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the test unit placement instructions by referring to the AHAM Standard Interpretation in AHAM AC–1–2020.

8. Network Functionality

Section 3.6.3 of AHAM AC–7–2022 specifies requirements for setting up air cleaners with network functionality, including requirements for the network connection and for establishing the connection between the air cleaner and the network. This section specifies that air cleaners must be tested on a Wi-Fi network and that if the unit has additional network capabilities (*e.g.,* Bluetooth®), these capabilities shall remain in their default, as-shipped configuration. Additionally, section 3.6.3 of AHAM AC–7–2022 specifies that the network shall support the highest and lowest data speeds of the air cleaner's network function, and that the live connection must be maintained for the duration of the active mode and standby mode tests. AHAM AC–7–2022 also specifies that if the air cleaner needs to install any software updates, testing must wait until these updates have occurred; otherwise, if the unit can operate without updates, the updates may be bypassed.

DOE is aware of at least one air cleaner on the market [21] that cannot be operated by the user, unless it is connected to an active network connection. On such a model, control of the air cleaner is provided exclusively through a mobile phone application. Accordingly, in the October 2022 NOPR, DOE proposed to reference the AHAM AC–7–2022 Draft network connection requirements in the proposed new appendix FF. 87 FR 63324, 63335.

DOE requested comment on its proposal to reference section 3.6.3 of AHAM AC–7–2022 Draft regarding network connection requirements during active mode and standby mode tests. DOE also requested comment on the impact on repeatability and reproducibility when testing air cleaners with network functionality while connected to a network. *Id.*

Additionally, DOE requested comment on whether the software update requirements are adequately specified or whether DOE should explicitly state that software updates must always be executed prior to running the tests. *Id.*

MIAQ commented that products with network connectivity should be network-connected for active and standby tests. MIAQ added that not including an available network connection would not represent actual real-world usage, and that network connectivity on a device would be the worst-case test scenario regarding power consumption and therefore needed to be considered. (MIAQ, No. 26 at p. 6)

MIAQ commented that products should always be tested with the latest software/firmware updates to ensure the latest bug fixes and changes are applied. MIAQ commented that software bugs associated with wireless connectivity may cause undue power consumption during the test and that updating software to the latest publicly available revision may avoid testing pre-loaded firmware that allows the device to consume less power. MIAQ stated that, if available, the firmware/software version should be recorded as part of the test for trackability. (MIAQ, No. 26 at pp. 6–7)

The CA IOUs recommended that DOE should expressly state that the tester must always execute software updates before running the tests. The CA IOUs stated they understood that the conducting of these software updates was the intent of AHAM AC–7 section 3.6.3.8. (CA IOUs, No. 30 at p. 3)

The Joint Commenters commented that they support DOE's proposal to reference section 3.6.3 of AHAM AC–7–2022 regarding network connection requirements. The Joint Commenters stated that they believe the text of section 3.6.3 of AHAM AC–7–2022 provides the most consistent, representative, and repeatable method for energy measurements. The Joint Commenters also stated that the intent of section 3.6.3.8 of AHAM AC–7–2022 is for software updates to be conducted prior to running the tests, as is industry practice. The Joint Commenters commented that if DOE wishes to indicate that the updates are mandatory, the Joint Commenters do not oppose that clarification. (Joint Commenters, No. 34 at p. 6)

In response to DOE's request for comment on whether the software update requirements are adequately specified, AHRI stated it does not have specific concerns. However, AHRI added that if there are different opinions on the need for when to perform software updates, it recommended addressing this issue during a certification rulemaking. (AHRI, No. 33 at p. 5)

In consideration of these comments, DOE has determined that installing the most recent software update prior to testing would ensure the most consumer-representative test results because consumers are most likely to update software if an update is available and, this would also ensure repeatable test results. Because section 3.6.3.8 of AHAM–AC–7–2022 does not adequately specify that the most up-to-date software shall be used, DOE is incorporating in the new appendix FF section 3.6.3.8 of AHAM AC–7–2022 with the additional requirement that software updates shall be conducted prior to initiating any testing. This added specificity will ensure reproducible and representative test results for units that can accommodate software updates.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the network connection requirements, as proposed in the October 2022 NOPR, in the new appendix FF and additionally clarifying that software updates shall be conducted prior to initiating any testing.

F. Instrumentation

Section 4 of AHAM AC–7–2022 specifies requirements for instrumentation used for measuring voltage and power by referencing IEC 62301 Ed. 2.0 and specifies the accuracy required for power-measuring equipment.

Sections 4.1.1 through 4.1.3 of AHAM AC–7–2022 specify requirements for power measurement uncertainty,

[21] *See,* for example: *auraair.io/pages/aura-air-1.*

frequency response, and long-term averaging, by referencing requirements in sections 4.4.1 through 4.4.3 of IEC 62301 Ed. 2.0. Along with these requirements, section 4 of AHAM AC–7–2022 specifies the accuracy of instruments used for measuring voltage and power to be accurate to within ±0.5 percent of the quantity measured. Section 4 of AHAM AC–7–2022 also specifies requirements for the accuracy of the temperature-measuring device (error no greater than ± 0.6 °C (± 1 °F) over the range being measured) and the relative humidity-measuring device (resolution of at least 1 percent relative humidity, and an accuracy of at least ± 3 percent relative humidity over the temperature range of (21 ± 3) °C [(70 ± 5) °F]).

In the October 2022 NOPR, DOE had referenced section 4.1.5 of AHAM AC–7–2022 Draft, which specified that the accuracy of the temperature-measuring device must have an error no greater than ±1 °F (0.6 °C) over the range being measured (*i.e.,* the allowable error was specified primarily in °F compared to the published AHAM AC–7–2022, which specifies the allowable error primarily in °C). Section 4.1.6 of AHAM AC–7–2022 Draft, which DOE referenced in the October 2022 NOPR, also specified that the relative humidity-measuring device shall have resolution of at least 1 percent relative humidity and shall have an accuracy of at least ±6 percent relative humidity over the temperature range of (24 ± 3) °C [(75 ± 5) °F]. 87 FR 63324, 63335.

DOE understands these instrumentation specifications to be appropriate for producing repeatable, reproducible, and representative test results for air cleaners, and that test laboratories currently have instrumentation that meets these proposed specifications. Therefore, in the October 2022 NOPR, DOE proposed to reference the instrumentation requirements specified in section 4 of AHAM AC–7–2022 Draft, including the applicable provisions from sections 4.4.1, 4.4.2, and 4.4.3 of IEC 62301 Ed. 2.0 in the proposed new appendix FF. *Id.*

DOE requested comment on its proposal to incorporate by reference section 4 of AHAM AC–7–2022 Draft regarding instrumentation requirements, including the applicable provisions from relevant sections of IEC 62301 Ed. 2.0. DOE requested comment on any changes to these requirements between publication of the October 2022 NOPR and publication of AHAM AC–7–2022, the reasons for these changes, and the impact of these changes on the overall air cleaners test procedure. *Id.*

AAF Flanders (AAF) recommended tightening the accuracy of the relative humidity measuring device from the ±6 percent specified in AHAM AC–7–2022 Draft because some of the media used in filters could be affected by humidity. (AAF, Public Meeting Transcript, No. 25 at p. 23) AAF also commented that the updated humidity instrumentation requirements in the published version of AHAM AC–7–2022 should be incorporated into the DOE test procedure. (*Id.* at p. 27)

The Joint Commenters stated that the published version of AHAM AC–7–2022 includes two editorial changes compared to AHAM AC–7–2022 Draft that was referenced in the October 2022 NOPR: (1) the °C temperature was added in section 4.1.5; and (2) the relative humidity accuracy was improved in section 4.1.6. The Joint Commenters commented that these editorial changes clarify the test and will improve accuracy. (Joint Commenters, No. 34 at p. 6)

MIAQ stated support for DOE's proposal to reference IEC 62301 Ed. 2.0 as cited in AHAM AC–7–2022 Draft for the instrumentation and testing provisions used to measure standby mode power consumption. (MIAQ, No. 26 at p. 3)

As discussed, the proposed editorial change to the temperature-measuring device accuracy requirements would not change the allowable tolerance, and the tighter tolerance for the relative humidity-measuring device is achievable. Accordingly, DOE is finalizing the instrumentation requirements in this final rule by referencing section 4 of AHAM AC–7–2022.

G. Active Mode Testing

1. Particulate Used for Testing and CADR Measurements

AHAM AC–7–2022 specifies calculating IEF using $PM_{2.5}$ CADR. Whereas, the ENERGY STAR V. 2.0 Specification specifies its metric based on smoke CADR, and the ENERGY STAR Product Specification for Room Air Cleaners, Version 1.0 [22] specified its metric based on dust CADR (as did the subsequent Version 1.2).

Given the historic use of both smoke and dust particulates to define a metric for air cleaners, DOE proposed in the October 2022 NOPR to incorporate by reference section 2.9 of AHAM AC–7–2022 Draft to specify testing with smoke and dust and calculating $PM_{2.5}$ CADR. 87 FR 63324, 63337. Additionally, DOE proposed to reference sections 5 and 6 of AHAM AC–1–2020 for conducting the smoke CADR and dust CADR tests in the proposed new appendix FF. *Id.*

Section 2.9 of AHAM AC–7–2022 specifies the method used to calculate $PM_{2.5}$ CADR, which is based on the measured smoke CADR and dust CADR values. Section 2.9 of AHAM AC–7–2022 discusses that the diversity of particle natures and the sizes of the dust and smoke pollutants give a well-balanced representation of the ultra-fine and fine particulate matters that define $PM_{2.5}$. Specifically, $PM_{2.5}$ CADR is obtained by combining the smoke CADR (which includes particle sizes ranging from 0.1 to 0.5 μm) with the dust CADR (which includes particle sizes ranging from 0.5 to 2.5 μm) and performing a geometric average calculation as follows:

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 0.5\ \mu m) \times Dust\ CADR\ (0.5 - 2.5\ \mu m)}$$

The tests to determine smoke CADR and dust CADR are specified in sections 5 and 6 of AHAM AC–1–2020. These sections of AHAM AC–1–2020 specify the procedure for introducing the smoke and dust particulates, conducting the natural decay test, and measuring the decay with the air cleaner in operation. However, $PM_{2.5}$ CADR specifies a narrower range of allowable particle sizes for the smoke CADR and dust CADR, than the smoke CADR and dust CADR tests in sections 5 and 6, respectively, of AHAM AC–1–2020. That is, the allowable particle size for smoke particles is 0.1 to 1 μm for the smoke CADR test in AHAM AC–1–2020, while it is 0.1 to 0.5 μm for the $PM_{2.5}$ calculation in AHAM AC–7–2022. Similarly, the allowable particle size for dust particles is 0.5 to 3 μm for the dust CADR test in AHAM AC–1–2020, while it is 0.5 to 2.5 μm for the $PM_{2.5}$ calculation in AHAM AC–7–2022.

[22] Further information on the ENERGY STAR Product Specification for Room Air Cleaners, Version 1.0 Specification is available online at *www.energystar.gov/sites/default/files/specs//private/room_air_cleaners_prog_req.v1_0pdf.pdf.*

While the allowable smoke and dust particle size ranges for the smoke CADR and dust CADR tests in sections 5 and 6, respectively, of AHAM AC–1–2020 are larger (*i.e.,* 0.1 to 1 μm for smoke particles and 0.5 to 3 μm for dust particles) than the allowable smoke and dust particle size ranges for the calculation of $PM_{2.5}$ CADR (*i.e.,* 0.1 to 0.5 μm for smoke particles and 0.5 to 2.5 μm for dust particles), the subset smoke CADR and dust CADR used to calculate $PM_{2.5}$ are nearly identical to the smoke CADR and dust CADR calculated according to sections 5 and 6 of AHAM AC–1–2020, as shown in the figures included in the Joint Proposal.[23]

Finally, as discussed in section III.C.1 of this document, section 5.7.1 of AHAM AC–7–2022, states that KCl is allowed as an alternate to cigarette smoke per ANSI/AHAM AC–1–2022, which is a standard that has not yet published.

Accordingly, in the October 2022 NOPR, DOE also proposed that $PM_{2.5}$ CADR may alternatively be calculated in the proposed new appendix FF using the full range of particles used to calculate smoke CADR and dust CADR according to sections 5 and 6 of AHAM AC–1–2020, respectively. 87 FR 63324, 63337. DOE added that it may revisit allowing the use of both approaches to calculate $PM_{2.5}$ CADR in a future standards rulemaking. *Id.*

DOE requested feedback on its proposal to incorporate by reference section 2.9 of AHAM AC–7–2022 Draft to calculate $PM_{2.5}$ CADR based on measurements of smoke CADR and dust CADR.

DOE also requested comment on its proposal to reference sections 5 and 6 of AHAM AC–1–2020 to specify the test methods for determining smoke CADR and dust CADR, respectively. *Id.*

DOE also requested comment on whether it should consider specifying that KCl is an allowable alternate to cigarette smoke in the measurement of smoke CADR, even if AHAM AC–1–2022 is not published by the time DOE publishes its final rule. DOE requested data and information on the implications of using cigarette smoke and KCl interchangeably when performing air cleaner performance tests. DOE requested data and information on how a CADR value obtained using KCl compares to the CADR value obtained using cigarette smoke. 87 FR 63324, 63330.

AHRI commented that $PM_{2.5}$ CADR is the preferred regulated metric. (AHRI, No. 33 at p. 6)

Carrier stated its support for DOE's proposal to incorporate by reference section 2.9 of AHAM AC–7–2022 Draft to calculate $PM_{2.5}$ CADR based on measurements of smoke CADR and dust CADR. (Carrier, No. 31 at p. 4)

AHRI commented that AHAM developed the $PM_{2.5}$ CADR calculation based on smoke and dust measurements using geometric averaging. AHRI commented that $PM_{2.5}$ is more meaningful to consumers than dust CADR and does not require additional testing. AHRI stated that because particulate matter is the primary pollutant of concern, $PM_{2.5}$ CADR is the most appropriate metric. (AHRI, No. 33 at p. 6) AHRI commented that $PM_{2.5}$ has been successfully used for decades to represent particles in air filtration and testing. AHRI additionally stated that ASHRAE 52.2 [24] considers $PM_{2.5}$ to be one of the 12 particles used for testing, and commented that spectrometric measurements of $PM_{2.5}$ are highly accurate and successful. (AHRI, No. 33 at p. 2)

DOE agrees that the $PM_{2.5}$ CADR metric is the most appropriate metric to use for assessing CADR performance. $PM_{2.5}$ CADR is an established industry metric that can provide consumer-relevant and representative results as compared to a CADR metric based on a single particulate because the range of particle sizes included in $PM_{2.5}$, also referred to as fine particles, pose the greatest risk to health.[25]

Frey commented that DOE was relying on outdated science on high efficiency particulate air (HEPA) filtration. Frey discussed that in the early 1990s, research showed that 0.3 μm particles were not the most difficult particles to capture, and that HEPA-level filtration was much less efficient with smaller particle sizes.[26] Frey urged DOE to take into account real-world filtration statistics that show filtration 26 times better than HEPA at particles of 0.3 μm in size. Frey stated that when removing dangerous pathogens, the higher the efficiency, the better, and that HEPA was not the best standard for such a task. (Frey, No. 22 at p. 1)

DOE notes that the air cleaners test procedure is intended to test conventional room air cleaners regardless of the technology used. That is, DOE is not establishing a test procedure only for air cleaners that utilize HEPA filters. Additionally, the test does not measure performance exclusively for 0.3 μm particles or the removal efficacy for 0.3 μm particles. Instead, particles introduced into the test chamber range in size from 0.1 μm to 2.5 μm, which are much broader in range than 0.3 μm particles.

The CA IOUs noted that the Joint Proposal proposed to use the dust CADR results from AHAM AC–1–2020 for the dust particulate test for already-tested products, which would help manufacturers meet the short-compliance timeline that is specified in the Joint Proposal. The CA IOUs stated that retesting products to AHAM AC–7–2022, which specifies a narrower range of allowable particle size, for the Tier 1 energy efficiency standard that is proposed in the Joint Proposal with a compliance deadline of December 31, 2023 would be challenging, and DOE's proposal to extend this same testing option to cigarette smoke in addition to dust was understandable as the retesting burden is the same. However, the CA IOUs commented that DOE should specify this requirement only for the Tier 1 energy efficiency standards, which would ensure that when the Tier 2 energy efficiency standards take effect, all products would be certified using the same test procedure. The CA IOUs added that if DOE found limiting the use of AHAM AC–1–2020 to only Tier 1 too challenging, the CA IOUs were amenable to allowing the full range of particulate size for the Tier 2 standards as well. (CA IOUs, No. 30 at pp. 3–4)

The Joint Commenters commented that they agree DOE should permit sections 5 and 6 of AHAM AC–1–2020 for smoke CADR and dust CADR to be applied in the calculation of $PM_{2.5}$ CADR for the Tier 1 standard proposed in the Joint Proposal. The Joint Commenters stated that the smoke CADR and dust CADR in sections 5 and 6 of AHAM AC–1–2022 are nearly identical to the subset particulate size used to calculate the $PM_{2.5}$ CADR. The Joint Commenters further commented that allowing this alternative for Tier 1 will ensure that manufacturers are not required to re-test using AHAM AC–1–2020 Annex I [27] to demonstrate compliance with a new standard on such a short timeline and can meet the expedited compliance date. Additionally, the Joint Commenters stated that they do not object to also

[23] The figure appears on page 6 of the Joint Proposal.

[24] Standard 52.2—2017—Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size (ANSI Approved). Available at: *https://www.techstreet.com/standards/ashrae-52-2-2017?product_id=1942059.*

[25] ''Particulate Matter (PM) Pollution.'' EPA. Available at: *https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.*

[26] Frey provided two attachments regarding particle filtration.

[27] Note that Annex I of AHAM AC–1–2020 specifies the calculation of $PM_{2.5}$ CADR, which is the same as that specified in section 2.9 of AHAM AC–7–2022.

applying this alternative to the Tier 2 standards in the Joint Proposal given that the results are essentially identical. (Joint Commenters, No. 34 at p. 6–7)

AHAM stated during the NOPR public meeting that there is very high correlation between $PM_{2.5}$ CADR calculated using the narrower and broader particle size range as the smoke and dust particle count tapers off after 0.5 µm. AHAM also stated that the purpose of allowing both ranges to be used is to allow manufactures to use previously certified data. AHAM noted that the particle size range was adjusted in AHAM AC–7–2022 to ensure preciseness of the $PM_{2.5}$ CADR metric. (AHAM, Public Meeting Transcript, No. 25 at p. 29)

MIAQ commented that in section 2.9 of AHAM AC–7–2022, the $PM_{2.5}$ CADR calculation shows the narrower particle size range for smoke CADR and dust CADR ratings used to calculate the combined $PM_{2.5}$ CADR. MIAQ suggested updating the equation to reflect the particle sizes referenced in sections 5 and 6 of AHAM AC–1–2020 for smoke CADR and dust CADR. (MIAQ, No. 26 at p. 7)

Carrier commented that there is insufficient data to demonstrate there is no impact from using the larger particle size range for the smoke CADR and dust CADR as defined in sections 5 and 6 of AHAM AC–1–2020 compared to the smaller particle size range for the $PM_{2.5}$ calculation in AHAM AC–7–2022. Therefore, Carrier stated it does not agree with DOE's proposal to allow the wider range to be used as an alternate means, and requests that DOE only allow the particle size range as defined in AHAM AC–7–2022. (Carrier, No. 31 at p. 4)

As stated in the October 2022 NOPR, DOE proposed that $PM_{2.5}$ CADR may alternatively be calculated using the full range of particles used to calculate smoke CADR and dust CADR according to sections 5 and 6 of AHAM AC–1–2020, respectively. 87 FR 63324, 63337. Given the results of the two approaches are similar, DOE noted explicitly that this was an alternate calculation that stakeholders *may* (emphasis added) choose to use, but noted it may revisit allowing the use of both approaches to calculate $PM_{2.5}$ CADR in a future standards rulemaking. *Id.* DOE maintains this position in this final rule and is not specifying a mandatory requirement at this time to calculate $PM_{2.5}$ CADR using the full range of particulate size as specified in sections 5 and 6 of AHAM AC–1–2020. That is, DOE is referencing section 2.9 of AHAM AC–7–2022 for the calculation of $PM_{2.5}$ CADR and additionally specifying the alternate calculation using the full range of particulate sizes that may optionally be used to determine $PM_{2.5}$ CADR. DOE will consider the applicable required use of either $PM_{2.5}$ CADR approach in a future standards rulemaking.

Regarding DOE's request for comment on using KCl as an alternative to cigarette smoke, MIAQ noted that AHAM expressed concerns with current methodology that would specify KCl as an allowable alternate to cigarette smoke in the measurement of smoke CADR and asked DOE to reference AHAM's comments and ensure alignment. (MIAQ, No. 26 at p. 3)

Daikin recommended that DOE specify using KCl instead of cigarette smoke to conduct the smoke CADR test. Daikin stated that using KCl would increase repeatability of the test due to the uniformity of the aerosolized matter and increase reproducibility because laboratories are better equipped to control KCl test particles. According to Daikin, unlike cigarette smoke, it is easier to clean test chambers after a test using KCl, and KCl does not introduce harmful residues and carcinogens. Daikin commented that test conditions for KCl testing could be different than those for smoke tests. Daikin recommended that DOE test, evaluate, and determine specific test conditions for KCl with the help of test laboratories. (Daikin No. 35 at p. 2) During the NOPR public meeting, Daikin requested more information about the test conduct and room concentration for using KCl as an alternative to cigarette smoke. (Daikin, Public Meeting Transcript, No. 25 at pp. 19–20)

The CA IOUs expressed support for adding a reference to KCl as an alternative to cigarette smoke, noting that although AHAM AC–1–2020 did not sufficiently define the full specification for KCl, it will be included in the to-be-published AHAM AC–1–2022. The CA IOUs recommended that for expediency, DOE should forgo specifying KCl as an alternative to cigarette smoke until the final version of AHAM AC–1–2022 is published with sufficient details regarding the use of KCl. (CA IOUs, No. 30 at p. 3)

Carrier stated its support for DOE's proposal to specify that KCl serve as an allowable alternate to cigarette smoke in the measurement of smoke CADR, even if AHAM AC–1–2022 Draft is not published before the final rule. Carrier offered the opinion that KCl will become the most widely used method for determining the $PM_{2.5}$ CADR, but that an understanding of the impact to CADR of cigarette smoke verses KCl will be necessary to properly establish an energy conversation standard. Carrier noted that it currently does not have data for the purposes of correlation. (Carrier, No. 31 at pp. 3–4)

The Joint Commenters commented that they support the concept of adding KCl as an alternate to smoke, as specified in a draft of AHAM AC–7–2022. However, the Joint Commenters further stated that there is not yet sufficient testing knowledge to specify KCl as an alternative. The Joint Commenters stated that while AHAM plans to complete the required testing, it will not be completed in time for DOE to include KCl as an alternative in the final test procedure while adhering to the timeline in the Joint Proposal. The Joint Commenters recommended that DOE forgo including KCl as an alternative until AHAM AC–1 has been updated to include the relevant specifications. The Joint Commenters stated that they hope DOE will consider amending the test procedure after AHAM AC–1 has been updated. (Joint Commenters, No. 34 at p. 5) During the public meeting, AHAM noted that they are in the process of updating AHAM AC–1–2020 and it will clearly specify what is need for KCl to represent cigarette smoke, including how the aerosolizer should be set up, the particle distribution and concertation requirements, and any additional specifications that may be required. AHAM noted that the standard will likely come out after DOE's test procedure final rule. (AHAM, Public Meeting Transcript, No. 25 at p. 21)

AHRI recommended that DOE implement AHAM AC–7–2022 Draft without modifications to the standard beyond the consideration of break-in conditions. AHRI commented that it prefers the $PM_{2.5}$ CADR metric utilizing KCl over the smoke and dust CADR as the regulated metric because the necessary technology is already available and that utilizing $PM_{2.5}$ CADR would simplify the testing process. AHRI stated that KCl is safer, easier to control, cleaner, and less expensive due to the lack of cleaning fees incurred. AHRI recommended that DOE consult with the appropriate standards committees and testing laboratories to determine the appropriate testing conditions for air cleaner performance tests. AHRI also commented that it prefers $PM_{2.5}$ CADR using KCl as the regulated metric compared to smoke or dust CADR. (AHRI, No. 33 at p. 2)

DOE recognizes the benefits of using KCl over cigarette smoke such as safer and cleaner test chamber conditions; however, given that the specific parameters to use KCl as an alternate to cigarette smoke are still under

development and DOE lacks data that correlates $PM_{2.5}$ CADR using KCl and cigarette smoke, DOE is not specifying the use of KCl as an alternative for cigarette smoke at this time. For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing referencing sections 5 and 6 of AHAM AC–1–2020 to specify the test methods for determining smoke CADR and dust CADR respectively, as proposed in the October 2022 NOPR. DOE is also finalizing referencing section 2.9 of AHAM AC–7–2022 to calculate $PM_{2.5}$ CADR and including an exception for alternately calculating $PM_{2.5}$ CADR using the smoke CADR and dust CADR as calculated according to sections 5 and 6 of AHAM AC–1–2020.

2. Performance Mode for Testing

Section 5.3 of AHAM AC–7–2022 specifies that all products shall be tested with the air cleaner set to the highest flow rate setting, also known as maximum performance mode. Additionally, section 5.3 of AHAM AC–7–2022 specifies that for products that have air cleaning functionality beyond mechanical filtration (*i.e.,* ionization, UV, *etc.*) the test unit shall be configured such that these features are enabled and set to the maximum level during active mode testing. Section 5.6 of AHAM AC–7–2022 additionally specifies that even though a product may have automatic mode, it shall be tested in its maximum performance mode and settings.

In the October 2022 NOPR, DOE proposed to reference section 5.3 of AHAM AC–7–2022 Draft regarding test unit setup requirements for testing in maximum performance mode. 87 FR 63324, 63338.

DOE requested comment on its proposal to reference section 5.3 of AHAM AC–7–2022 Draft to test units in maximum performance mode. *Id.*

Electrolux requested clarification regarding air cleaners with a turbo mode and whether turbo mode would be used during testing, or if testing would cover only the highest fan speed set manually. (Public Webinar Transcript, Electrolux, No. 25 at pp. 33–34)

DOE notes that section 5.3 of AHAM AC–7–2022 specifies that the maximum performance mode flow rate setting is the highest fan speed setting as identified in the manufacturer's instructions that would allow the product to operate indefinitely. Therefore, a turbo mode setting that has the highest flow rate for a certain period of time before transitioning to a lower flow rate without user input would not be considered for the maximum performance mode setting.

MIAQ commented that testing units in maximum performance mode represented the best solution for testing a worst-case power consumption scenario. MIAQ additionally stated that AHAM was working on a test plan for automatic mode. (MIAQ, No. 26 at p. 8)

The Joint Commenters commented that that there is no universally accepted way to test the speeds of all air cleaners. The Joint Commenters recommended that all air cleaners be tested at the maximum performance setting, which includes the highest continuous speed for the air cleaner, allowing consumers to make an informed selection based on the air cleaner's highest performance level. The Joint Commenters stated that the AHAM standards committee is working to develop a procedure for assessing automatic mode. However, the Joint Commenters stated that they believe it is worthwhile for DOE to proceed with the currently available test methods for now in order to achieve national standards and energy savings immediately. The Joint Commenters stated that they would not support DOE waiting to implement standards until an automatic-mode test is developed. (Joint Commenters, No. 34 at p. 8)

Daikin stated that it does not fully agree with the use of maximum power mode as the only power consumption or performance and efficacy test for air cleaners. Daikin commented that it is Daikin's understanding that DOE and AHAM are working together on identifying a test procedure for automatic mode operation. Daikin commented that it supports such an investigation and requested DOE to consider a lower operation mode (or a range of operation modes and contaminant loading) to ascertain a more realistic in-field air cleaner performance. Daikin commented that a maximum operation mode is not representative of field operations and such a metric can mislead consumers in making important decisions on buying air cleaners. (Daikin, No. 35 at p. 3)

Daikin commented that the October 2022 NOPR stated an intention to adopt the maximum performance mode test because there is no current consensus on the automatic mode test, but that the majority of air cleaners operate at medium speed or in automatic mode. Daikin added that if the intent of the regulation is to regulate the energy consumption of these devices and provide certified ratings in DOE's database leading to comparisons of CADR for different unit's maximum performance mode might not be appropriate and DOE might benefit from developing consensus around automatic mode testing. (Daikin, Public Meeting Transcript, No. 25 at pp. 34–35) Daikin also commented that the IEF metric is not representative of actual energy consumption because the unit is not expected to run at the maximum performance level at all times. (Daikin, Public Meeting Transcript, No. 25 at pp. 41–42) Daikin also asked if a sound rating will be measured during the maximum performance mode test. (Daikin, Public Meeting Transcript, No. 25 at p. 31)

Carrier asked if DOE had considered testing air cleaners at minimum or medium air flow to understand the operation in the system at these settings. Carrier commented that, in practice, many air cleaners are not operated at maximum air flow for noise or other reasons and they are operated at lower flow rates, saving energy at the same time. (Carrier, Public Meeting Transcript, No. 25 at p. 36)

AHRI commented that it would be ideal if the metric considered multiple modes of operation or the identity of the tested mode so that consumers have an accurate picture of product operation. (AHRI, No. 33 at p. 6)

NEEA recommended that DOE pursue future enhancements to the test procedure to account for performance in automatic mode, but that implementation of the test procedure should proceed to avoid delays in implementation of the energy conservation standard and so that near-term energy savings can be achieved. (NEEA, No. 28 at p. 2)

As discussed in the October 2022 NOPR, DOE determined that the requirement to perform testing at the maximum performance level provides the best balance among repeatability, reproducibility, and representativeness of test results at this time. 87 FR, 63324, 63338.

DOE notes that industry-accepted test methods for other modes, such as automatic mode or low speed mode, do not currently exist. DOE is participating in the AHAM task force that is developing a test method for testing air cleaners with automatic mode. Currently, DOE is not aware of a test procedure for air cleaners in automatic mode that measures energy efficiency during a representative average use cycle and that is not unduly burdensome to conduct. In the absence of such a test method for automatic mode, DOE maintains its determination that testing at the maximum performance level provides the best balance among repeatability, reproducibility, and representativeness of test results at this time. DOE additionally notes that it is not

including testing provisions for a sound rating because sound is not a direct performance measure of air cleaning (unlike smoke, dust, or pollen).

DOE is finalizing the requirement to test units in maximum performance mode, as proposed in the October 2022 NOPR. Accordingly, DOE is referencing sections 5.3 through 5.7.4 of AHAM AC–7–2022 for conducting the active mode test.

3. Secondary Functions

Section 5.4 of AHAM AC–7–2022 specifies the configuration for secondary functions, which are unrelated to air cleaning (*i.e.,* humidifier, ambient light, *etc.*). As these functions do not contribute to the air cleaning capabilities of the unit, they are switched off or disconnected for the duration of the test. If it is not possible to switch off or disconnect such functions, AHAM AC–7–2022 states that these functions shall be set to their lowest power-consuming mode that is selectable when running the air cleaner at its maximum performance mode or highest fan speed. For customized control displays, AHAM AC–7–2022 specifies that the test unit shall be configured to its default or as-shipped control setting intensity level, unless the panel lights are adjustable in intensity and are shipped in the off mode, in which case the control panel is run in the least-intensity mode that would keep it on for the test. In the October 2022 NOPR, DOE proposed to reference this requirement for the configuration of secondary functions. 87 FR 63324, 63338.

Section 5.5 of AHAM AC–7–2022 specifies the configuration of control functions during active mode testing. Control functions include any programmable functions that may continue to be enabled when the primary function is inactive (*i.e.,* clocks, Wi-Fi, remote controls, *etc.*). AHAM AC–7–2022 states that control functions are intended to be on and connected to any communication network during active mode testing.

In the October 2022 NOPR, DOE proposed to reference this requirement to specify that control functions shall be in on mode and connected to any communication network during active mode testing as specified in section 5.5 of AHAM AC–7–2022 Draft. *Id.* DOE requested comment on its proposal to reference sections 5.4 and 5.5 of AHAM AC–7–2022 Draft to specify the configuration of secondary functions and control functions during active mode testing. *Id.*

AHRI commented that it supports DOE's proposal to reference sections 5.4 and 5.5 of AHAM AC–7–2022 and advised DOE that it is acceptable to power off secondary functions if doing so has no impact on particle removal. (AHRI, No. 33 at p. 6)

As specified in section 5.4 of AHAM AC–7–2022, DOE agrees that it is acceptable to power off secondary functions, if it is possible to turn them off and doing so would not have an impact on air cleaning, because it allows determining the power consumption associated with air cleaning only, without the inclusion of any other functions (*e.g.,* a night light). Further, DOE does not have, nor did interested parties provide, information on consumer usage of secondary functions in air cleaners. Therefore, for the reasons discussed here and in the October 2022 NOPR, DOE is finalizing in the newly established appendix FF the configuration of secondary functions and control functions during active mode testing, as proposed in the October 2022 NOPR.

4. Power Measurement Procedure

Section 5.7 of AHAM AC–7–2022 specifies the methods for measuring active mode power. These methods include measuring the power consumption when operating the test unit within the test chamber at the same time as the smoke CADR and dust CADR tests or by measuring the power consumption during a supplemental power test outside a test chamber.

More specifically, section 5.7.1 of AHAM AC–7–2022 specifies that the power consumption measurement can be conducted simultaneously with the smoke CADR or dust CADR test from section 5.2.5 or 6.2.5 of AHAM AC–1–2020, respectively. Section 5.7.2 of AHAM AC–7–2022 specifies an alternative method for measuring active mode power consumption, referred to as the ''supplemental'' test. This test can be used to determine the active mode power consumption outside the test chamber used for smoke CADR and dust CADR testing. The supplemental power test specifies the same unit configuration and records power over a period of 15 minutes at no greater than one second intervals, averaging the power consumption over 13 minutes starting after the initial two minutes. AHAM AC–7–2022 additionally specifies that if the test unit has pollutant indicators and they do not light up when no pollutant is present in the air, but light up when detecting pollutants, then the test unit cannot be tested outside the chamber to measure active mode power consumption.

Finally, sections 5.7.3 and 5.7.4 of AHAM AC–7–2022 specify the equations to determine the average active mode power consumption and the annual active mode energy use, respectively.

As presented in the October 2022 NOPR, DOE performed testing at a third-party laboratory to investigate the similarity in power measurement between a test conducted simultaneously with the CADR measurement and a supplemental test performed outside a test chamber. 87 FR 63324, 63338–63339.

TABLE III.1—DIFFERENCE IN POWER CONSUMPTION BETWEEN SMOKE TEST AND SUPPLEMENTAL TEST

Unit No.	Smoke test power (W)	Supplemental test power (W)	Percent difference
1	44.2	43.9	−0.7
2	51.5	54.0	+4.9
3	55.0	55.6	+1.1
4	24.6	25.4	+3.3
5	18.8	18.9	+0.5
6	42.6	42.6	+0
7	5.9	5.8	−1.7
8	38.2	37.4	−2.1
9	37.9	38.3	+1.1
10	58.1	57.8	−0.5
11	84.8	81.7	−3.7
Average Difference			+0.2

As indicated in Table III.1, the percent difference between power consumption measured during the smoke CADR test and the supplemental out-of-chamber test ranged from −3.7 percent to +4.9 percent, with an average of +0.2 percent. Based on these data, in the October 2022 NOPR, DOE tentatively determined that the power consumption of the out-of-chamber supplemental power test is closely comparable to the in-chamber smoke, and likely dust, CADR tests because measured power using the maximum performance mode is not significantly impacted by whether a particle is present. 87 FR 63324, 63339. Accordingly, DOE proposed to reference sections 5.7.1 through 5.7.4 of AHAM AC–7–2022 Draft to measure active mode power either in the test chamber (section 5.7.1) at the same time as the smoke or dust CADR test or outside the chamber (section 5.7.2) as a supplemental power test and to calculate average power (section 5.7.3) and annual active mode energy use (section 5.7.4). *Id.*

DOE requested comment on its proposal to reference sections 5.7.1 through 5.7.4 of AHAM AC–7–2022 Draft, which specify methods for measuring active mode power at the same time as the smoke or dust CADR test when the test unit is operating within the chamber and measuring the power consumption during a supplemental power test outside a test chamber, respectively. *Id.*

The CA IOUs stated their agreement with DOE's proposal to reference sections 5.7.1 through 5.7.4 of AHAM AC–7–2022 because it would allow power measurement at the same time as CADR in certain settings. (CA IOUs, No. 30 at p. 4)

The Joint Commenters commented that they agree with DOE's proposal to reference sections 5.7.1 through 5.7.4 of AHAM AC–7–2022. The Joint Commenters stated that investigative testing by AHAM showed a −0.2 percent difference between the two methods, which they noted aligns with DOE's testing. (Joint Commenters, No. 34 at p. 7)

Daikin commented on the continued system performance over a system's lifetime. Daikin asked if there were any considerations around sustained CADR performance over a system's lifetime. (Daikin, Public Meeting Transcript, No. 25 at p. 49) DOE's test procedure is intended to measure the performance of a new product. DOE does not have any data or information to suggest how CADR may change over the lifetime of an air cleaner, if at all.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the methods for measuring active power at the same time as the smoke CADR or dust CADR test when the test unit is operating within the chamber or measuring the power consumption during a supplemental power test outside a test chamber, respectively, as proposed in the October 2022 NOPR.

5. Pollen CADR

To enable consistent and meaningful energy representations of metrics most desirable to consumers, DOE proposed in the October 2022 NOPR to include an additional test to determine pollen CADR. 87 FR 63324, 63339. Similar to dust CADR and smoke CADR, pollen CADR provides a measurement of the air cleaner's performance to remove pollen from indoor air. Pollen CADR typically increases with increasing air cleaner energy use, and therefore DOE believes this is an appropriate metric to measure. Further, according to the AAFA, more than 50 million people in the United States experience various types of allergies each year, and allergies are the sixth leading cause of chronic illness in the United States.[28] Further, pollen is one of the most common environmental allergens to trigger an allergic reaction. Accordingly, many air cleaners are marketed as providing pollen removal. DOE notes that the ENERGY STAR V. 2.0 Specification requires reporting of pollen CADR. DOE stated in the October 2022 NOPR that it is important that any representation related to an air cleaner's pollen CADR performance be made based on testing conducted in a repeatable and representative manner. Accordingly, in the October 2022 NOPR, DOE proposed to include the pollen CADR measurement test specified in section 7 of AHAM AC–1–2020. 87 FR 63324, 63339.

Section 7 of AHAM AC–1–2020 specifies the test procedure for determining paper mulberry pollen CADR. The method for measuring pollen CADR is the same as dust CADR and smoke CADR; however, the test duration is only 10 minutes compared to 20 minutes for the smoke test and dust test. The reduced test duration is specified because pollen decays faster than both dust and smoke and thus only 10 minutes is necessary to determine pollen CADR. All other test conditions remain the same including the test chamber, use of a recirculation and ceiling fan, and test equipment.

DOE stated in the October 2022 NOPR that because this test is currently specified in the ENERGY STAR V. 2.0 Specification, DOE expects it would minimally increase test burden compared to the tests required for smoke CADR and dust CADR. *Id.* at 87 FR 63339.

In the October 2022 NOPR, DOE requested comment on its proposal to reference section 7 of AHAM AC–1–2020 for the pollen CADR measurement test. *Id.* at 87 FR 63339–63340. DOE also requested comment and data on the relationship between the pollen CADR measurement and the energy use of the air cleaner. *Id.* at 87 FR 63340.

DOE further requested comment on whether it should specify measurement of active mode power consumption when conducting the pollen CADR measurement test. DOE also requested comment on whether it should consider specifying a pollen CADR/W metric and whether such a metric should be based on active mode power consumption or include energy consumption in both active mode and standby mode. *Id.*

MIAQ commented that there would be little additional burden to measure active power consumption when conducting the pollen CADR measurement test and such a measurement may provide additional energy consumption metrics for a higher power consumption rate as compared to smoke, dust, or $PM_{2.5}$. (MIAQ, No. 26 at p. 9)

MIAQ commented that the CADR/W metric for pollen was not necessary but could be considered in a manner similar to the AHAM metrics for smoke CADR, dust CADR, $PM_{2.5}$ CADR, and pollen CADR and the corresponding energy consumption metrics in CADR/W for each of the different pollutants, which would allow for a range of pollutants to be included. On the issue of including energy consumption for active mode or both active mode and standby mode, MIAQ commented that if this metric were used, it should follow the same methodology as that used for smoke, dust, or $PM_{2.5}$. (*Id.*)

The Joint Commenters commented that they do not believe a pollen CADR/W metric is necessary because they did not propose a standard based on pollen. (Joint Commenters, No. 34 at p. 3)

AHAM asked if manufacturers must use the DOE test procedure if they make a pollen CADR claim. AHAM also asked if there will be a reporting requirement for pollen CADR or standards for pollen CADR in a future rulemaking. AHAM further asked what DOE is basing its authority upon to include a

[28] Asthma and Allergy Foundation of America. Allergy Facts and Figures. *www.aafa.org/allergy-facts/.*

measurement that is not related to the $PM_{2.5}$ CADR metric. (AHAM, Public Meeting Transcript, No. 25 at pp. 43–44)

The CA IOUs commented that a power measurement during a pollen CADR test is unnecessary because the Joint Proposal did not propose a pollen-based standard. (CA IOUs, No. 30 at p. 3)

Carrier commented that the inclusion of pollen CADR is unnecessary and that manufacturers who would like to publish a value for pollen CADR can do so using the industry standard. (Carrier, No. 31 at p. 2) Carrier also commented that DOE should not specify a pollen CADR/W metric because this could create confusion in the market, as consumers may unknowingly attempt to compare an IEF based on pollen CADR to an IEF based on $PM_{2.5}$ CADR. Carrier commented that specifying a pollen CADR/W metric could increase design burden if the minimum IEF requirement for pollen CADR and $PM_{2.5}$ CADR are not correlated properly. (Carrier, No. 31 at p. 5)

AHRI stated that pollen CADR creates additional test burden and should not be added to the DOE test procedure requirement. AHRI further commented that DOE has the authority to regulate a single metric for a function and the smoke CADR currently used in energy calculations renders use of pollen CADR redundant. AHRI also commented that employing the same metric with different conditions may be confusing to end users and stated that testing must be representative of average use cycles or periods of use and cannot add burden without value. (AHRI, No. 33 at pp. 6–7)

First, in response to AHAM's comment on whether DOE may consider standards for pollen CADR in a future rulemaking, DOE notes, based on a review of products available on the market, that most manufacturers provide pollen CADR information on marketing materials. And, as discussed previously, similar to dust and smoke CADR, increasing pollen CADR typically requires increasing air cleaner energy use. As a result, DOE may consider pollen CADR in a future standards rulemaking. To that end, DOE is establishing a test procedure for pollen CADR in this final rule. (*See* 42 U.S.C. 6295(o)(3)(A) (requiring that DOE prescribe a test procedure prior to establishing an amended or new standard).)

DOE understands that if a pollen CADR/W metric is specified for a unit that also has the IEF listed in terms of CADR/W, it could cause some confusion in the marketplace. Accordingly, DOE is adopting the test to determine pollen CADR as specified in section 7 of AHAM AC–1–2020 but is not adopting a pollen CADR/W metric. DOE notes that manufacturers would be required to use the DOE test procedure if they make pollen CADR representations, including in marketing materials.

Regarding regulated metrics for air cleaners, DOE is not adopting reporting requirements or standards for any measured metrics in this test procedure final rule. DOE is establishing relevant capacity metrics and energy efficiency metrics for air cleaners in this test procedure and will consider the appropriate regulated metrics and subsequent reporting requirements as part of separate energy conservation standards or certification rulemakings.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the pollen CADR measurement test, as proposed in the October 2022 NOPR.

6. Consumer Use Hours

Section 5.7.4 of AHAM AC–7–2022 specifies the calculation for E_{active}, which is used to convert the power consumption measurement to an energy consumption value. To calculate E_{active}, AHAM AC–7–2022 estimates that an air cleaner spends 5,840 annual hours in active mode, which is equivalent to 16 hours per day.

In the October 2022 NOPR, DOE proposed to align with the estimated active mode annual hours specified in AHAM AC–7–2022 Draft (corresponding to 16 hours per day) and consistent with the ENERGY STAR V. 2.0 specification. 87 FR 63340.

DOE requested comment on its proposal to reference section 5.7.4 of AHAM AC–7–2022 Draft, which specifies the calculation of active mode energy consumption using an estimated 5,840 hours per year in active mode. *Id.*

MIAQ expressed support for DOE's proposal to reference section 5.7.4 of AHAM AC–7–2022 Draft; however, MIAQ noted that as technology progresses, the estimated 5,840 hours per year in active mode would no longer be acceptable (*e.g.,* on-demand usage). (MIAQ, No. 26 at p. 9)

DOE understands that the annual active mode hours may need to be periodically updated to keep up with technology trends. EPCA requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) DOE welcomes stakeholders to submit any relevant data and information regarding consumer usage hours in different modes of operation.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the calculation of active mode energy consumption using an estimated 5,840 hours per year in active mode, as proposed in the October 2022 NOPR.

H. Standby Mode Testing

Section 6 of AHAM AC–7–2022 defines the setup and procedures to measure air cleaner standby mode power consumption. In the October 2022 NOPR, DOE proposed to incorporate by reference all subsections of section 6 of AHAM AC–7–2022, which establish conditions of measurement, preparation of the air cleaner model for testing, test procedure, test results, and the annual combined low power mode energy consumption calculations. 87 FR 63324, 63340.

Section 6.3 of AHAM AC–7–2022 references section 5.3 of IEC 62301 Ed. 2.0 for the procedure to measure standby mode power. Sections 6.4.1 and 6.4.2 of AHAM AC–7–2022 define measurements for inactive mode power, P_{IA}, and off mode power, P_{OM}, respectively. DOE proposed to reference section 6.4 of AHAM AC–7–2022 Draft. *Id.* at 87 FR 63340–63341.

Section 6.5 of AHAM AC–7–2022 defines an annual combined low power mode energy consumption calculation based on P_{IA} and P_{OM} as follows:

$$E_{TLP} = \{(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})\} \times K$$

Where:

P_{IA} = air cleaner inactive mode power, in W, for air cleaners capable of operating in inactive mode; otherwise, $P_{IA} = 0$,

P_{OM} = air cleaner off mode power, in W, for air cleaners capable of operating in off mode; otherwise, $P_{OM} = 0$,

S_{IA} = annual hours in inactive mode and defined as S_{LP} if no off mode is possible, [S_{LP}/2] if both inactive mode and off mode are possible, and 0 if no inactive mode is possible,

S_{OM} = annual hours in off mode and defined as S_{LP} if no inactive mode is possible, [S_{LP}/2] if both inactive mode and off mode are possible, and 0 if no off mode is possible,

K = 0.001 kWh/Wh conversion factor for Wh to kWh,

S_{LP} = 2,920 air cleaner inactive mode annual hours.

Consistent with the active mode energy consumption calculation, AHAM AC–7–2022 specifies 2,920 annual hours in standby mode, which is

equivalent to 8 hours per day and is consistent with the estimated standby mode hours specified in the ENERGY STAR V. 2.0 Specification. Accordingly, in the October 2022 NOPR, DOE proposed to reference these requirements for standby mode. *Id.*

DOE requested feedback on its proposal to reference section 6 of AHAM AC–7–2022 Draft to determine annual combined low power mode energy consumption. *Id.*

During the Public Meeting, an unidentified stakeholder asked if the secondary functions would be disabled during standby mode testing. (Public Meeting Transcript, No. 25 at p. 39) As discussed in section III.D of this document, DOE is incorporating by reference from section 2 of AHAM AC–7–2022 definitions for ''secondary function'' and ''standby mode.'' Because the definition of standby mode excludes secondary functions (*i.e.,* functions that enable, supplement, or enhance a primary function and which are not directly related to air cleaning, including a vacuum, heating, humidification, or additional ambient room lights (*e.g.,* night light)), any such secondary functions would be disabled during standby mode testing.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the annual combined low power mode energy consumption determination, as proposed in the October 2022 NOPR.

I. Integrated Energy Factor Metric

As discussed, EPCA requires that DOE's test procedures for all covered products integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A))

DOE's analysis shows that it is technically feasible to integrate active mode and standby mode energy consumption into an overall performance metric for air cleaners. Specifically, active mode and standby mode power consumption can be combined into the AEC metric using the respective estimated annual usage hours. Further, to express air cleaner performance as a function of its power use, DOE's analysis shows that an integrated metric, such as IEF, is technically feasible. This approach is similar to other DOE test procedures, such as room air conditioners (*see* section 5.2.2 of 10 CFR 430, appendix F) and dehumidifiers (*see* section 5.4 of 10 CFR 430, appendix X1), which specify a metric that is expressed as space conditioning function provided per unit power.

In the October 2022 NOPR, DOE proposed to incorporate by reference section 7 of AHAM AC–7–2022 Draft, which provides a calculation to determine AEC and IEF for air cleaners as follows:

$$AEC = E_{active} + E_{TLP}$$

$$IEF = \left[\frac{CADR\left(\frac{ft^3}{min}\right)}{\left(AEC\left(\frac{kWh}{year}\right) * \frac{1\ year}{5{,}840\ hours} * \frac{1000\ Wh}{1\ kWh}\right)}\right]$$

Where:

$CADR = PM_{2.5}$ Clean air delivery rate from the combined smoke and dust test [cfm].

E_{active} = air cleaner active mode test energy consumption (in kWh per year).

E_{TLP} = low power mode annual energy consumption (expressed in kWh per year). 87 FR 63324, 63341–63342.

DOE requested comment on its proposal to reference section 7 of AHAM AC–7–2022 Draft for the AEC and IEF calculations. *Id.* at 87 FR 63342.

DOE did not receive any comments regarding the proposed methodology for determining AEC and IEF. AAF commented that the report that would be generated from the test procedure should include a statement indicating that measured CADR is only for the highest air flow setting for the device, and that it may not reflect performance at lower air velocities. (AAF, Public Meeting Transcript, No. 25 at pp. 31–32)

DOE is not adopting any reporting requirements as part of this final rule. Reporting requirements will be addressed in a future certification rulemaking. For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the AEC and IEF calculations, as proposed in the October 2022 NOPR.

J. Effective Room Size

DOE is aware that air cleaner manufacturers typically include several representations in marketing materials for their air cleaner models (*e.g.,* smoke CADR, dust CADR, pollen CADR, CADR/W, room size, *etc.*). DOE has observed that room size is represented in different ways among various models and different values of suitable room sizes may be specified even for the same model. As an illustrative example, DOE identified a model that is marketed for a large room up to 912 square feet, when completing one air change per hour and taking up to 60 minutes to clean air, while the same air cleaner is also represented as being suitable for a room size of 190 square feet with 4.8 air changes per hour and taking about 12.5 minutes to clean air. Further, this unit is rated in the AHAM Verifide [29] program as being applicable for a room size of 190 square feet. It is unlikely that the acceptable room size for an air cleaner of a given capacity can be increased proportionally, potentially to infinity, in such a manner, without having an impact on the cleaning performance of the air cleaner.

Room size would strongly impact the capacity of the air cleaner that would be required to clean the air in the desired room. For instance, if the air cleaner is too small compared to the size of the room it is being used in, it will be ineffective, thus providing low efficiency. Conversely, if an air cleaner is too big for the room that it is operated in, it will clean the air very quickly and still continue operating, leading to increased energy use. Therefore, it is important that an air cleaner be selected such that its capacity (expressed in terms of its CADR) is appropriate for the size of the room that it is intended to be used in. Additionally, for any air cleaner, the represented values of CADR and IEF are inherently a function of the room size that the unit is expected to

[29] AHAM Verifide. *ahamverifide.org/directory-of-air-cleaners/.*

operate in (*i.e.,* the represented CADR value is inherently a function of the test chamber size, number of air exchanges provided, and the initial concentration of the contaminant). Accordingly, DOE considers room size to be an important metric that must be represented accurately and consistently to provide meaningful information to consumers.

Section 8.6 and Annex E of AHAM AC–1–2020 specify a calculation for the effective room size based on standard construction criteria for rooms and a history of the natural decay rate of small particles as determined for cigarette smoke. Specifically, the room size calculation is based on the ability of the air cleaner to reduce the concentration of particles, expressed in CADR, in a room at steady state to a new steady-state concentration that is 80 percent less than the original when the air cleaner is operating. The calculation includes additional assumptions such as a mixing factor equal to 1.0, an air exchange rate of 1 per hour, a cigarette smoke particle natural decay equal to the average background natural decay (from statistical study), a ceiling height of 8 feet, and a cigarette smoke particle generation or influx rate such that a cigarette smoke particle concentration of 1 is maintained at the initial steady state. Based on its estimations, AHAM AC–1–2020 specifies that the effective room size, in square feet, that can be serviced by an air cleaner is 1.55 times the smoke CADR value of the air cleaner.

In the October 2022 NOPR, DOE proposed to include this calculation as a represented value for room size. 87 FR 63324, 63342. Specifically, DOE proposed to include in 10 CFR 429.67 that the effective room size be calculated as the product of 1.55 and the basic model's represented value of smoke CADR. DOE further proposed that this represented value of effective room size, in square feet, be rounded to the nearest whole number. *Id.*

DOE requested comment on its proposal to include a calculation from AHAM AC–1–2020 for the effective room size that can be serviced by an air cleaner. DOE requested comment on whether it is appropriate to use smoke CADR as the metric to calculate effective room size or if it should be based on $PM_{2.5}$ CADR instead, in which case, DOE requested comment on whether multiplying $PM_{2.5}$ CADR by 1.55 to determine effective room size in square feet is appropriate or if a different constant would need to be used instead. *Id.*

The Joint Commenters commented that they recommend communicating room size to consumers via a uniform test method, AHAM AC–1–2020 and urged DOE and the Federal Trade Commission (FTC) to coordinate. The Joint Commenters suggested that the recommended room size appear on the EnergyGuide label. The Joint Commenters stated that regardless of whether DOE or FTC specifies the test procedure, the relevant agency must use the test method specified in AHAM AC–1–2020, which calculates the recommended room size in square feet based on the removal of at least 80 percent of smoke particles in a steady-state room environment (assuming the room experiences incoming pollutants at the rate of one air change per hour) and with complete mixing in the room. (Joint Commenters, No. 34 at p. 3)

The Joint Commenters commented that DOE and FTC should not consider using a $PM_{2.5}$ CADR or other CADR value in place of the smoke CADR value used in the AHAM test method because the $PM_{2.5}$ CADR is not measured directly. The Joint Commenters stated that AHAM AC–1–2020 uses a specific engineering tobacco smoke to generate the smoke CADR, which has particles that are 100 to 1000 times smaller than the width of a human hair. The Joint Commenters commented that even if a consumer does not smoke, engineering tobacco smoke is a surrogate for many of the fine particles that may be found in a home. The Joint Commenters noted that the relationship between cleaning rate in CADR and room size to clean to the 80-percent level has been verified by scientists at the National Institute of Standards and Technology and recognized as reasonable by the FTC. The Joint Commenters stated that they strongly urge DOE and/or the FTC to use smoke CADR to determine the recommended room size. (Joint Commenters, No. 34 at p. 4)

The CA IOUs expressed a concern at the different methodologies used to derive and promote recommended room sizes. The CA IOUs also suggested that the FTC's EnergyGuide label should list the room size as determined by AHAM AC–1–2020 because it is an appropriate and accepted methodology. The CA IOUs commented that DOE should coordinate with the FTC on its open rulemaking relating to the EnergyGuide label for air cleaners. The CA IOUs commented that room size is often the first prominent feature on an air cleaner product listing and a guiding metric for consumers to identify the most appropriate product, but that the top three consumer report-rated air cleaners listed on the *Amazon.com* website use different methodologies or have inconsistent recommendations for room size measurements. The CA IOUs further stated that for consumers to make an informed decision, a single recommendation including the proper context was critical for this product. (CA IOUs, No. 30 at pp. 2–3)

Carrier commented that an effective room size should be a represented value and suggested that the room-size calculation should be based on $PM_{2.5}$ CADR, since this is used in the IEF calculation. Carrier stated a belief that multiplying the $PM_{2.5}$ CADR by 1.55 should yield consistent results with the AHAM AC–1–2020 calculation. (Carrier, No. 31 at p. 5)

Daikin recommended that DOE should focus on $PM_{2.5}$ as its primary pollutant of concern, especially in displaying regulated performance ratings. Consequently, Daikin commented that the room size metric should be based on $PM_{2.5}$ CADR. (Daikin, No. 35 at p. 3)

Dyson stated that AHAM AC–1–2020 currently precludes a reasonable one-size fits all room size calculation in a mandatory regulatory context. Dyson commented that DOE should refrain from including room size coverage in the scope of the air cleaner test procedure at this time. Dyson cited several reasons: (1) manufacturers currently offer nuanced estimates of room size coverage customized for different spaces to help consumers make shopping decisions. Collapsing room-size coverage claims to a single basis would prevent consumers from using the comparison, especially in large, commercial spaces (*e.g.,* offices, schools); (2) AHAM AC–1–2020 uses a recirculation fan during the test that may not be present in real-world spaces, yet the result from this test is used to extrapolate room coverage onto larger volumes than the test chamber with the result that machines with poor lateral whole-room air circulation receive an artificial ''boost''; (3) available data have not shown how AHAM AC–1–2020 room coverage translates to purification of real spaces, or how consistent that is across different rooms and product designs. The increase in measured CADR in actual larger chambers may not scale by the same factor for differently designed units; (4) the measured CADR of an air cleaner per AHAM AC–1–2020 was intrinsically linked to the test chamber physical volume, meaning the result was not ''air cleaned per minute,'' but rather ''active decay minus natural decay multiplied by the volume of the test chamber'' or ''air cleaned per minute in that room, with the recirculation fan''; and (5) the lack of test provisions for air cleaners with automatic, sensor-response modes makes DOE's room coverage proposal

overly simplistic, as automatic modes and sensors are common in today's air cleaner marketplace. Dyson noted an air cleaner with automatic mode solves this concern, but this distinction is absent with the proposed AHAM AC–1–2020 test method, which only specifies the machine to be run constantly in the highest fan speed operating mode (Dyson, No. 27 at pp. 1–2)

DOE recognizes that manufacturers may want to provide nuanced estimates of room size coverage for different usage scenarios. DOE also recognizes that the use of a recirculation fan during testing may not be present in all real-world spaces, but the recirculation fan is necessary during testing to maintain a homogenous environment within the test chamber to enable repeatable and reproducible results. DOE also notes that while automatic mode and sensors are common in today's air cleaners, the test procedure adopted in this document measures the performance of air cleaners in maximum performance mode without the use of any sensors and the measured room size metric is based on the conditions in which the air cleaner is tested (*i.e.,* maximum performance mode). Additionally, the $PM_{2.5}$ CADR and IEF measurements are representative only for a given set of conditions (*e.g.,* test chamber size, initial particulate concentration, *etc.*). Accordingly, it is necessary that the effective room size specification is representative of the other rated parameters, such as $PM_{2.5}$ CADR, AEC, and IEF.

Additionally, while DOE had requested comment on whether it should consider specifying the effective room size calculation in terms of $PM_{2.5}$ CADR, as opposed to smoke CADR, which is used to calculate effective room size in AHAM AC–1–2020, DOE has determined that using smoke CADR is appropriate because smoke CADR is determined directly through testing, whereas $PM_{2.5}$ CADR is a calculated value. The effective room size calculation specified in AHAM AC–1–2020 is also provided specifically for smoke CADR, and it is possible that some assumptions would need to be changed if the effective room size were to be calculated using a different metric.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the representation of the effective room size, as proposed in the October 2022 NOPR. Further, DOE intends to coordinate with FTC regarding labeling requirements for air cleaners during the ongoing rulemaking (*see* 87 FR 64399).

K. Sampling Plan

In the October 2022 NOPR, DOE proposed the following sampling plan and rounding requirements applicable to any representations of energy consumption or energy efficiency of air cleaners. 87 FR 63324, 63342. The sampling requirements would be included in the proposed 10 CFR 429.67. Specifically, DOE proposed that the general sampling requirements of 10 CFR 429.11 for selecting units to be tested be applicable to air cleaners. *Id.* In addition, DOE proposed that for each air cleaner basic model, a sufficient sample size must be randomly selected to ensure that a representative value of energy consumption for a basic model is greater than or equal to the higher of the mean of the sample or upper 95 percent confidence limit (UCL) of the true mean divided by 1.10. For IEF or other measure of energy consumption where a higher value is preferable to the consumer, the representative value shall be less than or equal to the lower of the mean of the sample or the lower 95 percent confidence limit (LCL) of the true mean divided by 0.90. *Id.* The mean, UCL, and LCL are calculated as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

where:

$\bar{x}$ is the sample mean;
n is the number of units in the test sample;
x_i is the i^{th} sample;
s is the sample standard deviation; and
$t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom.

This proposed sampling plan for air cleaners is consistent with sampling plans already established for portable air conditioners,[30] dehumidifiers,[31] and other similar products that are portable and/or provide space conditioning functionality.

DOE also proposed that all calculations be performed with the unrounded measured values, and that representations of pollen CADR, smoke CADR, dust CADR, and $PM_{2.5}$ CADR values of a basic model be calculated as the mean of the CADR for each tested unit of the basic model, rounded to the nearest whole number. *Id.* at 87 FR 63343. DOE further proposed that AEC be rounded to the nearest 0.1 kWh/year and the IEF be rounded to the nearest 0.1 CADR/W. As noted previously, DOE proposed that the effective room size be rounded to the nearest whole number. DOE proposed that these rounding instructions would be included in the proposed sampling plan for air cleaners. *Id.*

DOE did not propose any certification or reporting requirements for air cleaners in the October 2022 NOPR. DOE would propose certification requirements through a separate rulemaking in the future, as needed.

DOE requested comment on the proposed sampling plan and rounding requirements for smoke CADR, dust CADR, $PM_{2.5}$ CADR, AEC, and IEF. *Id.*

AHRI recommended the expedited adoption of $PM_{2.5}$ CADR and suggested that DOE define the test procedure around a single $PM_{2.5}$ CADR test as opposed to a calculated rating. AHRI also advised DOE to ensure that data is meaningful to end users regardless of the results and the consumers should be able to understand the rating system and make informed decisions based on the information provided. (AHRI, No. 33 at p. 7) AHRI recommended that DOE use $PM_{2.5}$ CADR given that DOE is limited to one metric per product. AHRI commented that $PM_{2.5}$ CADR should be prioritized over other CADR including smoke, dust, AEC, and IEF as it can be considered more representative than the other more specific particulates. AHRI stated that using $PM_{2.5}$ CADR would reduce overall test burden because it allows for testing more units while requiring that fewer tests be run, thereby lowering testing costs. AHRI commented that air quality considerations necessitate that the metric be standardized. AHRI commented that DOE should not prohibit manufacturers from making claims where needed for specific particles, but recommended against DOE regulating them. (AHRI, No. 33 at p. 8)

DOE's statutory authority does not limit the number of parameters that are required to be reported as part of the certification and compliance requirements. That is, interim variables that are used for calculating the final metric, such as smoke CADR and dust CADR, may be reported. DOE is not establishing certification or reporting

[30] 10 CFR 429.62.
[31] 10 CFR 429.36.

requirements for air cleaners in this final rule, but may consider proposals to establish certification requirements and reporting for air cleaners under a separate rulemaking regarding appliance and equipment certification.

The CA IOUs recommended that DOE align the rounding for AEC with CADR and round to the nearest whole number instead of 0.1 kWh per year. The CA IOUs stated that DOE's proposal to round CADR values to the nearest whole number for reporting would be consistent with AHAM AC–1–2020. (CA IOUs, No. 30 at p. 4)

The Joint Commenters commented that they recommend DOE specify rounding AEC to the nearest whole number to be consistent with AHAM AC–1–2020's rounding of CADR and room size to whole numbers. (Joint Commenters, No. 34 at p. 4)

The National Institute of Standards and Technology (NIST) requested information on the proposed rounding of CADR to the nearest whole number when the precision of the method is to ±10 cfm. NIST asked for clarification on whether rounding would be to the nearest 10 cfm. (Public Webinar Transcript, NIST, No. 25 at p. 48)

In consideration of stakeholder comments, DOE has determined that it is more appropriate to round AEC to the nearest whole number, as determined from the accuracy of the test measurement instrumentation. Accordingly, DOE has updated the rounding requirements for AEC to be rounded to the nearest whole number. Additionally, DOE is maintaining rounding CADR to the nearest whole number, which is also consistent with the rounding requirements specified in AHAM AC–1–2020.

Additionally, while DOE proposed in the October 2022 NOPR that the sampling requirements would be included in the proposed 10 CFR 429.67, DOE is finalizing the sampling requirements in 10 CFR 429.68 because 10 CFR 429.67 presents certification requirements for certain commercial air conditioning and heating equipment. Relatedly, DOE is also updating paragraphs (a) and (b)(1) in 10 CFR 429.11, which lists the general sampling requirements for selecting units to be tested to change the referenced sections from 10 CFR 429.14 through 10 CFR 429.65 to 10 CFR 429.14 through 10 CFR 429.68.

For the reasons discussed here and in the October 2022 NOPR, DOE is finalizing the sampling plan, as proposed in the October 2022 NOPR, while updating the rounding requirements for AEC to be rounded to the nearest whole number.

As discussed previously, manufacturers will not be required to test according to the DOE test procedure until compliance is required with any future applicable standards for air cleaners that are established.

L. Test Procedure Costs

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE references industry standards AHAM AC–7–2022, AHAM AC–1–2020, and IEC 62301 Ed. 2.0 to measure pollen CADR, smoke CADR, dust CADR, and active mode and standby mode power consumption. DOE also uses these measured values to calculate $PM_{2.5}$ CADR, AEC, and IEF as specified in AHAM AC–7–2022 and effective room size as specified in AHAM AC–1–2020. The following paragraphs discuss DOE's evaluation of estimated costs associated with this proposal.

Based on quotes from third-party laboratories, in the October 2022 NOPR, DOE estimated average testing costs to be approximately $3,000 to test one unit according to AHAM AC–1–2020 at such a laboratory. 87 FR 63324, 63343. These costs would include the tests to determine pollen CADR, smoke CADR, dust CADR, active mode power, and standby mode power. DOE typically requires at least two units to be tested for each basic model. Therefore, DOE estimated that manufacturers would incur testing costs of approximately $6,000 per basic model (because of the minimum sample size of two units, as specified in 10 CFR 429.11(b)). *Id.*

DOE requested comment on its initial determination of the costs for testing according to the proposed new air cleaner test procedure. DOE also requested comment on the potential impact to manufacturers from the proposed new air cleaner test procedure. *Id.*

Carrier commented that DOE's estimated average testing cost is low. Carrier commented that its recent experience has been $2,500 per aerosol, which would amount to $7,500 per unit or $15,000 per basic model. (Carrier, No. 31 at pp. 5–6)

As discussed, DOE's estimates of $3,000 per test unit and $6,000 per basic model were based on DOE's recent experience performing testing of air cleaners at qualified third-party laboratories. DOE recognizes that these costs may not be reflective of the costs incurred by all manufacturers who use third-party test laboratories. Accordingly, DOE has revised its estimate from the October 2022 analysis and determines that the cost required to conduct the air cleaner test procedure established by this final rule could range from $3,000 to $7,500 per unit and $6,000 to $15,000 per basic model.

M. Effective and Compliance Dates

The effective date for the adopted test procedure will be 30 days after publication of this final rule in the **Federal Register**. As previously stated, there are currently no energy conservation standards for air cleaners. Beginning on the compliance date of any energy conservation standards for air cleaners, any representations with respect to the energy use or efficiency of these products, including those made for certification purposes, must be made in accordance with the test procedure established in this final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such

techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

On October 18, 2022, DOE published a notice of proposed rulemaking (NOPR) for the test procedure (October 2022 NOPR) presenting DOE's proposals to establish a test procedure for air cleaners. 87 FR 63324. As part of the October 2022 NOPR, DOE conducted its initial regulatory flexibility analysis (IRFA). The following sections outline DOE's determination that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted.

DOE did not receive any written comments that specifically addressed the impacts on small businesses or that were provided directly in response to the IRFA request for comment.

DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. The size standards are listed by North American Industry Classification System (NAICS) code as well as by industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing air cleaners is classified under NAICS 335210, ''Small Electrical Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category. DOE used available public information to identify potential small manufacturers. DOE accessed the AHAM's database of Certified Room Air Cleaners,[32] ENERGY STAR's data set of Certified Air Purifiers (Cleaners),[33] California Air Resources Board's (CARB) CARB-Certified Air Cleaning Devices,[34] and retailer websites to create a list of original equipment manufacturers (OEMs) that manufacture the products covered by this final rule. Once DOE created a list of OEMs, DOE used market research tools to determine whether any met the SBA's definition of a small entity—based on the total number of employees for each company including parent, subsidiary, and sister entities—and gather annual revenue estimates. Between the October 2022 NOPR and the test procedure final rule publication, DOE conducted additional research to identify manufacturers and to review the scope of manufacturer product offerings. Due to the identification of additional manufacturers and updates in scope of test procedure coverage, the manufacturer counts have been updated since the October 2022 NOPR.

Based on DOE's analysis, DOE identified 43 companies that are OEMs of air cleaners covered by this test procedure. DOE screened out companies that do not meet the small entity definition and, additionally, screened out companies that are largely or entirely foreign owned and operated. Of the 43 companies, four were identified as small, domestic businesses.

In this final rule, DOE establishes a new test procedure for air cleaners at appendix FF to 10 CFR part 430, subpart B ''Uniform Test Method for Measuring the Energy Consumption of Air Cleaners.'' DOE notes that manufacturers will not be required to test according to the DOE test procedure until a future energy conservation standard for air cleaners is established and compliance is required.

Based on quotes from third-party laboratories, in the October 2022 NOPR, DOE estimated average testing costs to be approximately $3,000 to test one unit according to AHAM AC–1–2020 at such a laboratory. 87 FR 63324, 63343. These costs would include the tests to determine pollen CADR, smoke CADR, dust CADR, active mode power, and standby mode power. DOE typically requires at least two units to be tested for each basic model. Therefore, DOE estimated that manufacturers would incur testing costs of approximately $6,000 per basic model (because of the minimum sample size of two units, as specified in 10 CFR 429.11(b)). *Id.* As discussed in section III.L, DOE has considered comments from one manufacturer suggesting that these costs could be as high as $7,500 per unit and $15,000 per basic model. DOE has considered these potentially higher costs as a more conservative estimate in its analysis.

For the four small, domestic OEMs, DOE estimated the cost to rate their basic models and compared those costs to annual revenues. Using DOE's initial estimates from the October 2022 NOPR, DOE found that testing costs would be less than one percent of their revenue over the typical five-year period between the publication date and compliance date of a future energy conservation standard for a newly covered product. This conclusion applies to three out of the four identified small OEMs even when considering the potentially higher cost of $15,000 per basic model. For one of the identified OEMs, the more conservative cost estimate of $15,000 per basic model would correspond to around 2.3 percent of the company's conversion period revenue, as discussed in the following paragraphs.

For the first company identified, it will incur a testing cost of $60,000 for its 10 models as a result of amendments to the test procedure (or, as a more conservative estimate, $150,000). This company has an annual revenue of $272.64 million. A testing cost of $60,000 is approximately 0.004 percent of the company's conversion period revenue (or, as a more conservative estimate, a testing cost of $150,000 is approximately 0.01 percent of the company's conversion period revenue).

For the second company identified, it will incur a testing cost of $60,000 for its 10 models as a result of amendments to the test procedure (or, as a more conservative estimate, $150,000). This

[32] Association of Home Appliance Manufacturers. *Certified Room Air Cleaners.* Available at *www.ahamdir.com/room-air-cleaners/* (Last accessed January 24, 2022).

[33] Energy Star. *ENERGY STAR Certified Air Purifiers (Cleaners).* Available at *www.energystar.gov/productfinder/product/certified-room-air-cleaners/results* (Last accessed May 31, 2022).

[34] The California Air Resources Board. ''List of CARB-Certified Air Cleaning Devices.'' *ww2.arb.ca.gov/list-carb-certified-air-cleaning-devices* (Last accessed January 1, 2022).

company has an annual revenue of $1.31 million, and the testing cost of $60,000 is approximately 0.92 percent of the company's conversion period revenue (or, as a more conservative estimate, a testing cost of $150,000 is approximately 2.3 percent of the company's conversion period revenue).

For the third company identified, it will incur a testing cost of $24,000 for its 4 models as a result of amendments to the test procedure (or, as a more conservative estimate, $60,000). This company has an annual revenue of $19.55 million, and the testing cost of $24,000 is approximately 0.02 percent of the company's conversion period revenue (or, as a more conservative estimate, a testing cost of $150,000 is approximately 0.05 percent of the company's conversion period revenue).

For the fourth company identified, it will incur a testing cost of $36,000 for its 6 models as a result of amendments to the test procedure (or, as a more conservative estimate, $90,000). This company has an annual revenue of $3.63 million, and the testing cost of $36,000 is approximately 0.20 percent of the company's conversion period revenue (or, as a more conservative estimate, a testing cost of $150,000 is approximately 0.5 percent of the company's conversion period revenue). Based on the limited number of small entities affected and the *de minimis* cost impacts, DOE certifies that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and determines that the preparation of a FRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of air cleaners must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. (*See* generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Certification data will be required for air cleaners; however, DOE is not establishing certification or reporting requirements for air cleaners in this final rule. Instead, DOE may consider proposals to establish certification requirements and reporting for air cleaners under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes a new test procedure that it expects will be used to develop and implement future energy conservation standards for air cleaners. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines that are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The test procedure for air cleaners established in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHAM AC–7–2022, AHAM AC–1–2020, and IEC 62301 Ed. 2.0. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

AHAM AC–1–2020 is a voluntary industry-accepted test procedure that provides test methods to measure the relative reduction of particulate matter, including smoke and dust, suspended in the air in a specified test chamber when an air cleaner is in operation. Specifically, the test procedure codified by this final rule references sections 5 and 6 of AHAM AC–1–2020 to determine the smoke and dust CADR of the air cleaner test unit. AHAM AC–1–2020 is also referenced in several

sections of AHAM AC–7–2022 that DOE is referencing in its test procedure.

AHAM AC–7–2022 is a voluntary industry-accepted test procedure that measures active mode and standby mode power consumption of air cleaners. Specifically, the test procedure codified by this final rule generally references AHAM AC–7–2022 including provisions for: definitions, test conditions, instrumentation, active mode and standby mode power measurement, and calculation of $PM_{2.5}$ CADR, AEC, and IEF.

These standards are reasonably available from AHAM at *www.aham.org/AHAM/AuxStore.*

IEC 62301 Ed. 2.0 is an international standard that specifies methods of measurement of electrical power consumption of household appliances in standby mode(s) and other low power modes, as applicable. The new appendix FF references AHAM AC–7–2022, to specify the standby mode power consumption test method, which further references IEC 62301 Ed. 2.0 for the measurement of air cleaners standby power consumption. IEC 62301 Ed. 2.0 is reasonably available from IEC (*webstore.iec.ch*).

ASTM E741–11(2017) specifies techniques using tracer gas dilution for determining a single zone's air change with the outdoors, as induced by weather conditions and by mechanical ventilation. The new appendix FF references AHAM AC–7–2022 to specify the test chamber air exchange rate, which further references ASTM E741–11(2017) as the method to measure test chamber air exchange rate. ASTM E741–11(2017) is reasonably available from ASTM (*www.astm.org*).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on February 21, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 22, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317, 28 U.S.C. 2461 note.

§ 429.11 [Amended]

■ 2. Amend paragraphs (a) and (b)(1) of § 429.11 by removing the text ''§§ 429.14 through 429.65'' and adding in its place ''§§ 429.14 through 429.68''.

■ 3. Add § 429.68 to read as follows:

§ 429.68 Air cleaners.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to air cleaners; and

(2) For each basic mode of air cleaners, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of annual energy consumption or other measure of energy consumption of a basic mode for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ is the sample mean;
n is the number of samples; and,
x_i is the i^{th} sample.

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

Where:

$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of samples; and,
$t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A).

And

(ii) Any represented value of the integrated energy factor or other measure of energy consumption of a basic mode for which consumers would favor higher values shall be less than or equal to the high:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ is the sample mean;
n is the number of samples; and,
x_i is the i^{th} sample.

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

Where:

$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of samples; and,
$t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A).

And

(3) Any represented value of the pollen, smoke, dust, and $PM_{2.5}$ clean air delivery rate (CADR) of a basic model must be the mean of the CADR for each tested unit of the basic model. Round the mean clean air delivery rate value to the nearest whole number.

(4) Any represented value of the effective room size, in square feet, of a basic model must be calculated as the product of 1.55 and the represented smoke CADR value of the basic model as determined in paragraph (a)(3) of this section. Round the value of the effective

room size, in square feet, to the nearest whole number.

(5) Round the value of the annual energy consumption, in kWh/year, of a basic model to the nearest whole number.

(6) Round the value of the integrated energy factor of a basic model to the nearest 0.1 CADR/W.

(b) [Reserved]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Amend § 430.2 by adding in alphabetical order a definition for ''Conventional room air cleaner'' to read as follows:

§ 430.2 Definitions.

* * * * *

Conventional room air cleaner means an air cleaner that—

(1) Is a portable or wall mounted (fixed) unit, excluding ceiling mounted unit, that plugs into an electrical outlet;

(2) Operates with a fan for air circulation; and

(3) Contains means to remove, destroy, and/or deactivate particulates. The term portable is as defined in section 2.1.3.1 of AHAM AC–7–2022 (incorporated by reference; see § 430.3) and fixed is as defined in section 2.1.3.2 of AHAM AC–7–2022.

* * * * *

■ 6. Amend § 430.3 by:

■ a. Redesignating paragraphs (i)(1) through (7) as (i)(3) through (9);

■ b. Adding new paragraphs (i)(1) and (2);

■ c. Adding paragraph (j)(4); and

■ d. In paragraph (p)(7), removing the text ''and CC'' and adding, in its place, the text ''CC, and FF''.

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(i) * * *

(1) ANSI/AHAM AC–1–2020, (''AHAM AC–1–2020''), *Method for Measuring Performance of Portable Household Electric Room Air Cleaners,* ANSI-approved December 14, 2020, including AHAM Standard Interpretation dated September 19, 2022; IBR approved for appendix FF to subpart B.

(2) AHAM AC–7–2022, *Energy Test Method for Consumer Room Air Cleaners,* copyright 2022; IBR approved for § 430.2 and appendix FF to subpart B.

* * * * *

(j) * * *

(4) ASTM E741–11 (Reapproved 2017) (''ASTM E741–11(2017)''), *Standard Test Method for Determining Air Change in a Single Zone Means of a Tracer Gas Dilution* Approved Sept. 1, 2017; IBR approved for appendix FF to subpart B.

* * * * *

■ 7. Amend § 430.23 by adding paragraph (hh) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(hh) *Air cleaners.* (1) The pollen clean air delivery rate (CADR), smoke CADR, and dust CADR, expressed in cubic feet per minute (cfm), for conventional room air cleaners shall be measured in accordance with section 5 of appendix FF of this subpart.

(2) The $PM_{2.5}$ CADR, expressed in cfm, for conventional room air cleaners, shall be measured in accordance with section 5 of appendix FF of this subpart.

(3) The active mode and standby mode power consumption, expressed in watts, shall be measured in accordance with sections 5 and 6, respectively, of appendix FF of this subpart.

(4) The annual energy consumption, expressed in kilowatt-hours per year, and the integrated energy factor, expressed in CADR per watts (CADR/W), for conventional room air cleaners, shall be measured in accordance with section 7 of appendix FF of this subpart.

(5) The estimated annual operating cost for conventional room air cleaners, expressed in dollars per year, shall be determined by multiplying the following two factors:

(i) The annual energy consumption as calculated in accordance with section 7 of appendix FF of this subpart, and

(ii) A representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

Appendix EE to Subpart B of Part 430 [Reserved]

■ 8. Add reserved appendix EE to subpart B of part 430.

■ 9. Add Appendix FF to subpart B of part 430 to read as follows:

Appendix FF to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Air Cleaners

Note: Beginning on the compliance date of any energy conservation standards for air cleaners, any representations made with respect to the energy use or efficiency of these products, including those made for certification purposes, must be made in accordance with the results of testing pursuant to this appendix. Manufacturers may choose to test in accordance with this appendix to certify compliance with any energy conservation standards prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3 the entire standard for AHAM AC–1–2020, AHAM AC–7–2022, ASTM E741–11(2017), and IEC 62301. However, only enumerated provisions of AHAM AC–1–2020, AHAM AC–7–2022, and IEC 62301 apply to this appendix, as follows:

0.1 AHAM AC–1–2020

(a) Sections 4.2 through 4.6;
(b) Sections 5 through 7;
(c) Section 8.1;
(d) Annex A;
(e) Annex I; and
(f) AHAM Standard Interpretation.

0.2 AHAM AC–7–2022

(a) Sections 2.2 and 2.3, sections 2.4.1 through 2.4.2.4, and sections 2.6 through 2.9;
(b) Sections 3.1 through 3.6.3;
(c) Section 4;
(d) Sections 5.3 through 5.7.4; and
(e) Sections 6 and 7.

0.3 IEC 62301: Household Electrical Appliances—Measurement of Standby Power

(a) Sections 4.4.1 through 4.4.3; and
(b) Section 5.3.

1. Scope of Coverage

This appendix contains the test requirements to measure the energy performance of a conventional room air cleaner, as defined at § 430.2, with smoke CADR and dust CADR between 10 to 600 cubic feet per minute (cfm), inclusive.

2. Definitions

The definitions in sections 2.2, 2.3, 2.4.1 through 2.4.2.4, 2.6 through 2.8, and 2.9 of AHAM AC–7–2022 apply to this test procedure, including the applicable provisions of Annex I of AHAM AC–1–2020 as referenced in section 2.9 of AHAM AC–7–2022.

3. Test Conditions

Testing conditions shall be as specified in sections 3.1 through 3.6.3 of AHAM AC–7–2022, including the applicable provisions of sections 4.2 through 4.6 and Annex A of AHAM AC–1–2020 as referenced in sections 3.2.1, 3.3, 3.4, 3.5, and 3.6.2 of AHAM AC–7–2022 and the applicable provisions of ASTM E 741–11(2017) as referenced in section 3.3 of AHAM AC–7–2022. Additionally, the following requirements are also applicable:

3.1. *Placement for Testing.* The air cleaner test unit shall be placed in the test chamber as specified in section 3.6.2 of AHAM AC–7–2022. Additionally, the placement instructions specified in AHAM Standard Interpretation in AHAM AC–1–2020 are also applicable.

3.2. *Air Cleaners with Network Mode Capability.* The air cleaner software update requirements specified in section 3.6.3.8 of AHAM AC–7–2022 are applicable. Additionally, software updates shall be conducted, if available, prior to initiating any testing. Software updates shall not be bypassed, even if the unit will operate without updates.

4. Instrumentation

Test instruments shall be as specified in section 4 of AHAM AC–7–2022, including the applicable provisions of sections 4.4.1 through 4.4.3 of IEC 62301.

5. Active Mode CADR and Power Measurement

Measurement of smoke CADR, dust CADR, and pollen CADR shall be as specified in sections 5 through 7 of AHAM AC–1–2020, respectively. Measurement of active mode power shall be as specified in sections 5.3 through 5.7.4 of AHAM AC–7–2022, including the applicable provisions of sections 5.2.5 and 6.2.5 of AHAM AC–1–2020 as referenced in section 5.7.1 of AHAM AC–7–2022. Additionally, the following requirement is also applicable:

5.1. *Calculation of $PM_{2.5}$ CADR.*

5.1.1 $PM_{2.5}$ CADR should be calculated as specified in section 2.9 of AHAM AC–7–2022.

5.1.2. $PM_{2.5}$ CADR may alternately be calculated using the smoke CADR and dust CADR values determined according to sections 5 and 6, respectively, of AHAM AC–1–2020, according to the following equation:

CADR =

6. Standby Mode Power Measurement

Standby mode power consumption shall be measured as specified in section 6 of AHAM AC–7–2022, including the applicable provisions of section 5.3 of IEC 62301.

7. Total Energy Calculation

Annual energy consumption, expressed in kilowatt-hours per year, and integrated energy factor, expressed in CADR per watt, shall be calculated as specified in section 7 of AHAM AC–7–2022.

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FEDERAL REGISTER PAGES AND DATE, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

31 CFR

587.....13316
591 (2 documents).....13022, 13024

33 CFR

165 (2 documents).....12829, 12831, 13026, 13316

Proposed Rules:

147.....13745

37 CFR

1.....13028

38 CFR

17.....13033

39 CFR

Proposed Rules:

3010.....13752
3035.....13752
3040.....13752

40 CFR

9.....13696
52 (3 documents).....12831, 12833, 12835, 13320, 13713
63.....13956
271.....13034
721.....13696

Proposed Rules:

52 (2 documents).....13392, 13394, 13752, 13755
271.....13077
1090.....13758

41 CFR

60–1.....12842

42 CFR

73.....13322

47 CFR

73.....13715
300.....13715

Proposed Rules:

73.....13398, 13770

48 CFR

212 (2 documents).....12861, 12862
225.....12861
232.....12862
242.....12864
252 (2 documents).....12861, 12862

49 CFR

Proposed Rules:

107.....13624
171.....13624
172.....13624
173.....13624
178.....13624
180.....13624

50 CFR

17.....13038
660.....12865
679.....12868, 13238, 13328

Proposed Rules:

300.....13399
622.....13077
635.....13771
648.....13408

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 10, 2023

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